Supreme Court, U.S.
FILED

NO. 08 1 4 4 0 MAY 1 4 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

BRENT R. COLE, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

DAVID S. HAEG
Pro Se

P.O. Box 123
Soldotna, AK 99669
Telephone: (907) 262-9249
Fax: (907) 262-8867

## SHORT EXPLANATION OF CASE

David Haeg was prosecuted by the State of Alaska (SOA) for actions while participating in the extremely controversial Wolf Control Program (WCP). Haeg first hired attorney Brent Cole, then Arthur Robinson, then Mark Osterman, and finally ended up representing himself. Actions of these 3 attorneys during Haeg's prosecution are partial cause for Haeg's February 23, 2009 Petition for Writ of Certiorari (No. 08-1108) of his criminal conviction & sentence to this Court.

During criminal appeals Haeg filed fee arbitration against Cole with the Alaska Bar Association (ABA).

Haeg claimed Cole's actions that should overturn his conviction & sentence should also entitle him to a return of fees paid to Cole.

Haeg believes the evidence & testimony produced during fee arbitration, the adverse decision, and the subsequent appeals show an intentional and fundamental breakdown in justice and, when combined with the evidence and testimony produced during Haeg's prosecution (petition for writ of certiorari No. 08-1108), shows a nearly unbelievable breakdown.

## QUESTION FOR REVIEW

Was it a violation of the U.S. Constitution, amendments V & XIV, for a fee arbitration award favorable to attorney Brent Cole not to be vacated because of Cole & his witness's materially false arbitration testimony?

## TABLE OF CONTENTS


Page

Short Explanation of Case ---- i

Question for Review ---- i

Table of Contents ---- ii-iii

Table of Authorities ---- iv-vi

Opinions Below ---- 1

Jurisdiction ---- 1

Legal Provisions Involved ---- 1-7

Facts ---- 8-22

Argument ---- 22-47

Conclusion ---- 47-51

Appendixes ---- ii-iii, 52-378

- Appendix A ---- 52-61
- Appendix B ---- 62-69
- Appendix C ---- 70-75
- Appendix D ---- 76
- Appendix E ---- 77-99
- Appendix F ---- 100-105
- Appendix G ---- 106-111
- Appendix H ---- 112-115
- Appendix I ---- 116-286
- Appendix J ---- 287-336
- Appendix K ---- 337
- Appendix L ---- 338

Appendix M ---------- 339
Appendix N ---------- 340-344
Appendix O ---------- 345
Appendix P ---------- 346
Appendix Q ---------- 347-352
Appendix R ---------- 353-357
Appendix S ---------- 358-359
Appendix T ---------- 360
Appendix U ---------- 361-370
Appendix V ---------- 371-372
Appendix W ---------- 373-376
Appendix X ---------- 377-378

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Baldwin v. Hale, 68 U.S. 223 (1863) | 36 |
| Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974) | 25 |
| Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985) | 24-25 |
| Counselman v. Hitchcock (1892) 142 US 547, 564 | 27 |
| County of Nassau v. Canavan, 2003 N.Y. Int. 0139 (Nov. 24, 2003) | 24 |
| Daly v. Superior Court (1977) 19 Cal.3d 132, 145 | 28 |
| Ferri v. Ackerman, 444 U.S. 193, 204 (1979) | 41 |
| Fuentes v. Shevin, 92 S. Ct. 1983, 407 U.S. 67 | 24 |
| Holloway v. Arkansas, 435 U.S. 475 (1978) | 41-42 |
| Jones v. Barnes, 463 U.S. 745, 758 (1983) | 41 |
| Kastigar v. United States (1972) 406 US 441, 453 | 27 |
| Lee v. Thorton, 538 F.2d 27 (2d Cir. 1976) | 24-25 |
| Mapp v. Ohio, 367 U.S. 643 (1961) | 31 |
| Memphis Light, Gas & Water Div. V. Craft, 436 U.S. 1 (1978) | 36 |
| Mooney v. Holohan, 294 U.S. 103 (1935) | 30 |
| Napue v. Illinois, 360 U.S. 264 (1959) | 30-31 |
| North Carolina v. Pearce, 395 U.S. 711 (1969) | 29 |
| Olmstead v. U.S., 277 U.S. 438, 485 (1928) | 31 |
| Powell v. State of Alabama, 287 U.S. 45 (1932) | 42 |
| Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) | 39 |
| Shaw v. State of Alaska Public Defender Agency (10/8/93), 861 P 2d 566 | 45 |
| Smith v. State, 717 P.2d 402 (Alaska 1986) | 38-39 |
| Sniadach v. Family Finance Corp. 395 U.S. 337 (1969) | 25 |

State v. Malkin, 722 P.2d 943 (Ak. 1986) ---------- 31-32
State v. Sexton, 709 A.2d 288
(N.J. Super. CT. App. Div. 1998) ---------- 48
Stypmann v. City and County of San Francisco,
557 F.2d 1338 (9th Cir. 1977) ---------- 24
U.S. v. Cronic, 466 U.S. 648 (1984) ---------- 40-41
U.S. v. Goodrich, 493 F.2d 390,
393 (9th Cir. 1974) ---------- 38
U.S. v. Hunt, 496 F.2d 888 (5th 1974) ---------- 31
U.S. v. Marshank, 777 F. Supp. 1507
(N.D. Cal. 1991) ---------- 49
Waiste v. State 10 P.3d 1141 (Ak 2000) ---------- 23

**United States Constitution**

Amendment IV ---------- 1
Amendment V ---------- 1
Amendment VI ---------- 2
Amendment XIV ---------- 2

**Alaska Constitution**

Article 1, Section 1 ---------- 2
Article 1, Section 7 ---------- 2
Article 1, Section 9 ---------- 2
Article 1, Section 11 ---------- 2-3
Article 1, Section 14 ---------- 3

**United States Code**

Title 18 U.S.C. § 241 ---------- 3, 46
Title 18 U.S.C. § 242 ---------- 4, 46
Title 28 U.S.C. § 1257(a) ---------- 1, 4

**Alaska Statutes**

AS 09.43.120(a) ---------- 4, 33
AS 16.05.783 ---------- 3, 4-5, 37-38
AS 22.15.060(a) ---------- 5, 45

**Alaska Administrative Codes**

5 AAC 92.039(h) ---------- 3, 36
5 AAC 92.110(m)---------- 3, 36

**Alaska Rules**

Alaska Rules of Appellate Procedure
Rule 206(a)(1) ---------- 5, 21-22
Alaska Rule of Criminal Procedure 37(c) ---------- 5, 22-23
Alaska Rule of Evidence 410(a) ---------- 6, 26-27

**U.S. Supreme Court Rules**

Rule 13---------- 6
Rule 15---------- 7, 50
Rule 16---------- 7

## OPINIONS BELOW

August 26, 2006 arbitration judgment. Apx.C.

June 15, 2007 Kenai Superior Court judgment. Apx.B.

January 30, 2009 ASC judgment. Apx.A.

February 23, 2009 ASC denial of Petition for Rehearing. Apx.D

## JURISDICTION

The Alaska Supreme Court decided Haeg's case on January 30, 2009. Apx.A. On February 23, 2009 the ASC denied Haeg's Petition of Rehearing. Apx.D.

Under 28 U.S.C. § 1257(a) this Court now has jurisdiction.

## CONSTITUTIONAL PROVISIONS INVOLVED

**The United States Constitution:**

**Amendment IV-** "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,"

**Amendment V** – "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;"

**Amendment VI** – "In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

**Amendment XIV - Section 1**. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**The Constitution of the State of Alaska:**

**Article 1, Section 1 – Inherent Rights** – "This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

**Article 1, Section 7 - Due Process** – "No person shall be deprived of life, liberty, or property, without due process of law."

**Article 1, Section 9 - Jeopardy and Self-Incrimination** – "No person shall be compelled in any criminal proceeding to be a witness against himself."

**Article 1, Section 11 - Rights of Accused** – "In all criminal prosecutions, the accused shall have the right to informed of the nature and cause of the accusation; to be

released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

**Article 1, Section 14 - Searches and Seizures** – "The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation,"

## ALASKA ADMINISTRATIVE CODES INVOLVED

**5 AAC 92.039(h)** In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title. (AS 16 includes all hunting).

**5 AAC 92.110(m)** A wolf population reduction or wolf population regulation program established under this section is independent of, and does not apply to, hunting and trapping authorized in 5 AAC 84 - 5 AAC 85.

## UNITED STATES CODES INVOLVED

**Title 18 U.S.C. § 241.** "Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; They shall be fined under this title or imprisoned not more than ten years, or both..."

Title 18 U.S.C. § 242. "Deprivation of rights under color of law: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ...shall be fined under this title or imprisoned not more than one year, or both..."

**Title 28 U.S.C. § 1257(a)** State courts; certiorari (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where ... any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## STATUTES INVOLVED

**AS 09.43.120 Vacating An Award.** (a) On application of a party, the court shall vacate an award if (1) the award was procured by fraud or other undue means...

**AS 16.05.783(a)** A person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne. *However, the Board of Game may authorize a predator control program as part of a game management plan that involves airborne or same day airborne shooting* if the board has determined based on information provided by the department (1) in regard to an identified big game prey population under AS 16.05.255(g) that objectives set by the board for the population have not been achieved and that predation is an important cause for the failure to achieve the objectives set by the board, and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives; or (2) that a

disease or parasite of a predator population (A) is threatening the normal biological condition of the predator population; or (B) if left untreated, would spread to other populations. (b) This section does not apply to (1) a person who was airborne the same day if that person was airborne only on a regularly scheduled commercial flight; or (2) an employee of the department who, as part of a game management program, is authorized to shoot or to assist in shooting wolf, wolverine, fox, or lynx on the same day that the employee has been airborne. *(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both.*

**AS 22.15.060. Criminal Jurisdiction**. (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor...

## STATE RULES INVOLVED

**Alaska Rules of Appellate Procedure Rule 206**: Stay of Execution and Release Pending Appeal in Criminal Cases. (a) Stay of Execution. (1) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending appeal.

**Alaska Rule of Criminal Procedure 37(c)**: Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

**Alaska Rule of Evidence 410: Inadmissibility of Plea Discussions in Other Proceedings.** (a) *Evidence ...of statements or agreements made in connection with any of the foregoing pleas or offers, isn't admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere...***Commentary** To foster negotiations *the rule provides that nothing that is said during plea bargaining may be used against the accused in any proceeding, whether criminal, civil or administrative. Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial* or other proceeding.

## U.S. SUPREME COURT RULES INVOLVED

**Rule 13. Review on Certiorari: Time for Petitioning.** 1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort...is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review. ... 3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party...the time to file the petition for a writ of certiorari... runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

**Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs.** 2. ... In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

**Rule 16. Disposition of a Petition for a Writ of Certiorari.** 1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. *The order may be a summary disposition on the merits.*

## FACTS

In the 1990's a very divisive controversy developed concerning wolf predation management in Alaska. Lawsuits, ballot initiatives, and propaganda eventually halted prior management. Resulting ungulate (moose, caribou, sheep, etc) decline led to severe shortages for human use, causing great hardship for those who depended on ungulates to put food on the table.

Pressure built and an experimental Wolf Control Program (WCP) to restore ungulates, limited to part of Game Management Unit (GMU) area 19D and authorizing aerial wolf shooting from October 2003 to March 2004, was implemented by the Alaska Board of Game (BOG). This seven-member board is governor appointed, legislature confirmed, and passes law managing wildlife. Opposition tried stopping this experiment – citing ineffectiveness.

On February 7, 2004 master hunting guide Haeg and registered hunting guide Zellers were solicited by the SOA for a 19D WCP team. Haeg wasn't licensed to guide hunts in 19D *but was licensed in 19C, with a hunting lodge there.*

About February 28, 2004, and just prior to Haeg's participations in the WCP, a BOG member told Haeg:

> "In the first 4 months only 4 of the 55 wolves required have been taken; if more wolves aren't taken in the remaining 2 months the WCP may be judged ineffective and shut down for good; you must kill more wolves to prevent this; *if you end up taking wolves outside the area just mark their GPS coordinates as being taken inside the area."* Apx.E.

On March 26, 2004 Trooper Gibbens claimed finding evidence Haeg aerially shot wolves *"in 19C"*, also stating:

> "Based on my experience, there is a clear economic incentive for Haeg... to eliminate or reduce predators from this area, wh ch could potentially increase numbers of trophy animals for [Haeg] to harvest with clients."

*Gibbens GPS coordinates, however, placed all evidence in 19D.* From March 29 to April 2, 2004 the false 19C evidence location (and that Haeg had a hunting lodge in 19C) was used in all affidavits to obtain warrants seizing Haeg's property. Apx.F. Haeg was using the airplane and other equipment as primary means to provide a livelihood when seized. No postseizure hearing or notice of postseizure hearing was given. No notice was provided the SOA would seek property forfeiture and/or of statutes authorizing forfeiture. Apx.G. During seizure the SOA responded *"never"* when Haeg asked when he could get the property back because he needed it for his livelihood.

April 9, 2004 attorney Cole was hired and told Haeg:

> "Because of program harm the Governor will bring immense pressure on your [Haeg's] judge and prosecutor to make an example of you; *nothing can be done about the falsified evidence location*; a PA to hunting/guiding charges is best; you [Haeg] can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they had been taken inside; give up a year of guiding, statement, kill map, and fly in witnesses for a PA requiring a 1-year license loss." Apx.H,I.

Cole never told Haeg a hearing was available to protest being put out of business or that Haeg could bond his property out, even after Haeg specifically asked; never told Haeg of forfeiture notice right, notice of forfeiture case, notice of statutes authorizing forfeiture, and/or items for forfeiture; and never told Haeg WCP law prevented hunting/guiding prosecutions. Apx.H,I.

On April 23, 2004 Haeg, for a PA, provided the SOA an evidence location map and on June 11, 2004 a statement. *Prosecutor Leaders and Gibbens taped Haeg's testimony evidence location was 19D, not 19C.* Cole told them Haeg already gave up the PA guide year. On June 23, 2004 Zellers, after Haeg's implicating statement, cooperated and gave a statement. Leaders and Gibbens taped Zellers testimony evidence location was 19D, not 19C.

On November 4, 2004 an information was filed in accordance with the PA that was scheduled to be finalized in court on November 9, 2004. Apx.J. On November 8, 2004 Haeg sent the court and SOA a letter of his intended testimony the next day: that the SOA, to ensure success, encouraged him to take wolves outside the WCP area but claim they were taken inside; he had already given up a year guiding, statement, and cooperated in every way for the PA; and his actions did not help his business. Apx.E. On November 8, 2004 1 PM, just after letter receipt, Leaders filed an amended information violating the PA by increasing severity of charges. Leaders also used Haeg's PA statement for the never agreed to charges. Apx.J. Although Haeg had already flown in PA witnesses from Illinois Cole said the only way to enforce the PA "was to call Leaders boss." Apx.I. The PA never concluded and Haeg wasn't allowed to testify about the SOA's WCP instructions or PA reliance. *On or after November 8, 2004 Haeg's*

*written statement vanished from the official court record – yet proof documenting submission remained.* Apx.K.

On November 11-22, 2004, during attorney/client meetings, Haeg taped Cole:

> "Leaders can use your statement against you; the only PA enforcement available is calling Leaders boss; it is legal and ethical for Leaders to break the PA after the statement and year guiding given for it; I can't piss Leaders off because I have be able to make deals with him in the future; you should be charged with hunting/guiding violations; the [SOA] encouraging you to take wolves outside the area and then to mark them inside isn't a defense; and there is no way to ask to get your plane and property back." Apx.H.

On December 3, 2004 Haeg fired Cole and on December 10, 2004 hired attorney Robinson, who stated:

> "The PA and everything given for it was a waste; your PA statement can be used against you; you can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they were taken inside; the false evidence locations can't be protested; you will lose at trial because Cole has given Leaders everything but I have no doubt we will win on appeal since the information wasn't supported by affidavit the court didn't have subject-matter jurisdiction; *you must never tell the court of the PA or all you have done for it because this*

> *would admit you voluntarily submitted to subject-matter jurisdiction;* go to trial *and don't put on evidence because it's a waste of money;* Zellers can testify against you."

Robinson never told Haeg due process required when business property is seized, deprived, or forfeited and never kept Leaders from using Haeg's statement.

On March 31, 2005 Robinson motioned Haeg couldn't be charged with hunting/guiding violations because WCP law prohibited this. Apx.L. Robinson's May 6, 2005 reply, supported by Haeg's affidavit, claimed Leaders shouldn't use Haeg's statement. Apx.M. The DC May 9, 2005 denial, without knowledge of the false evidence locations, never addressed Haeg's statement use. Apx.N.

On May 17-18, 2005 Judge Murphy verbally granted the SOA's protection order:

> *Judge Murphy*: "[Y]ou [Robinson] can't argue as a matter of law [because of the WCP law] he [Haeg] was not hunting." Apx.O.

At July 26-29, 2005 trial Robinson said because Haeg's statement was being used Haeg must testify to present favorable evidence. Robinson never revealed the SOA's case was based on false evidence locations. Leaders argued, unopposed, that since Haeg killing wolves where he guided benefited his business, Haeg should be found guilty of hunting/guiding violations.

Leaders solicited and accepted Gibbens trial testimony the evidence was in 19C:

*Leaders,* "Those wolf kills that you investigate there, they were where?"

*Gibbens,* "19C"

Gibbens, immediately confronted on cross-examination at Haeg's insistence, admitted the evidence he just testified was in 19C was really in 19D.

*Gibbens, "I'll correct that if you like. Those four kill sites are in the corner of 19D."*

Robinson told Haeg nothing could be done about Gibbens false testimony because the "good boy network of Troopers, prosecutors, and judges take care of their own."

On July 29, 2005 Haeg was convicted.

On August 24, 2005 the court allowed sentence enhancement because Haeg's failed PA required it. Apx.P.

Sentenced September 29-30, 2005. Haeg subpoena & plane ticketed Cole to sentencing. Apx.Q. Haeg typed up 56 questions for Robinson to ask Cole about the PA and what Cole told Haeg. Apx.R. Cole didn't appear and Robinson told Haeg, "Nothing can be done".

Leaders sentence argument: *"[T]he great economic benefit Haeg received from killing wolves where he guides."*

The SOA testified they had no idea why Haeg gave up guiding the previous year.

Robinson refused to ask Zellers, Hilterbrand, Stepnosky (witnesses present when PA failed) or Haeg

typed questions about Haeg's failed PA, Cole's advice, reliance on the PA; why the PA failed; refused to question Leaders about Haeg's PA; and never revealed Leaders case was based upon Haeg's PA cooperation and upon evidence moved from 19D to 19C. No objection to the 2 AM sentencing and nothing of all already given for the failed PA – statement, year guiding, and witnesses flown in.

On September 29-30, 2005 Haeg was sentenced to 570 days jail, $19,500.00 fine, $100,000.00 property forfeiture, and 5-year license revocation (no credit for PA year).

> Judge Murphy's specific on-record sentence justification without stay: *"[S]ince the majority if not all the wolves were taken in 19C – in the area where you were hunting".*

No sentence appeal notification was given. Robinson said sentence couldn't be appealed and never protested justification or license revocation.

On October 14, 2005 Robinson filed points of appeal: court didn't have "subject matter jurisdiction". Apx.S.

> *Robinson's taped conversations after sentencing*: "No one will care about 2 AM sentencing when you couldn't think straight; Gibbens and Leaders weren't charged with perjury because of the fold...the old boy system - the group they protect and don't do anything against...made up of prosecutors, cops, judges, and magistrates; Murphy lied and was a law enforcement type of judge and she's not the independent, judiciary type that you're suppose to have; Cole didn't

> appear because his testimony wasn't relevant to your guilt (*Haeg*: "I was already found guilty and subpoenaed Cole to my *sentencing* to minimize my sentence with all I did for a PA I never got"); *nothing other than subject-matter jurisdiction is worth appealing;* you couldn't sue anyone until your conviction is reversed."

In February 2006 Haeg fired Robinson and found documentation in Robinson's file that Cole never intended on obeying subpoena to sentencing. Apx.T.

About March 15, 2006 Haeg contacted attorney Osterman and tape-recorded everything. After file review Osterman stated:

> *Osterman*: "Cole and Robinson sold you out to the SOA; Leaders and Gibbens committing perjury to falsify evidence locations must be raised on appeal; you didn't know they [you own attorneys] were goanna set it up so that their [the State's] dang dice was always loaded...they were always goanna win; the COA will reverse when they see the sellout; how come no one tried to enforce the PA; need to bring up all you did for the PA; we need to bring up they used your statement; they [Cole and Robinson] conspired to keep Cole from testifying; what Leaders did was stomped on your head with boots. He went way, way, way to far and he violated all the rules that would normally apply and your attorneys allowed him, at that time, to commit these violations; a motion to suppress [evidence] would've succeeded;

[Haeg's] is the strangest damn case I've ever seen - I mean talk about a pile up here - this is a pile up man...I'm standing there going what the hell happened here?"

On March 20, 2006 Haeg hired Osterman.

Weeks after being hired Osterman stated:

*Osterman:* "We can't use the false [evidence] location because the COA wouldn't be willing to give you that much justice; the SOA not having evidence might be worse for you; the COA will tell you go to hell, laugh like hell, and throw out your appeal if you complain about the moved evidence; you shouldn't find out why they [Cole and Robinson] sold you out because they might have had a valid reason; if you attempt to expose the sell out your appeal will be thrown out; it wasn't wrong he [Cole] didn't make it to your sentencing; Robinson is the old he-wolf that basically runs things around here...has lots of political pull... and heads up the criminal section of the Bar; I didn't use the perjury because judges don't care; nothing is there [briefed] of the sellout because we're appealing the merits -- not dissatisfaction with your other lawyers; nobody cares attorneys lie to clients; proving they [Haeg's attorneys and SOA] conspired isn't goanna help you; if you fire me the COA will never let you represent yourself; the COA could give a shit less that you gave up a years guiding and statement for a PA they broke; I'm not putting anything in the brief that

> will affect their [Cole and Robinson] lives; I'm not goanna get them [Cole and Robinson] to go to prison; it was time you realized this might be a life-changing event and to try to fix the errors and not have it change life was very dangerous; the issues we raised on appeal – *it may not be there per se.*"

Haeg fired Osterman on May 23, 2006.

On February 8, 2006 Haeg filed fee arbitration against Cole, who testified April 12 – July 12, 2006:

> *Cole:* "You had no right to a prompt post-seizure hearing; the law doesn't allow seized property to be bonded out; your statement wasn't used; I told you I could file a motion to enforce the PA; you didn't want to enforce the PA because it would cost a lot of money; you didn't want to risk enforcing the PA; there was no PA; I didn't tell him [Haeg] about suppressing evidence because I didn't think it was a good idea; I didn't testify [at Haeg's sentencing] because I wouldn't be a good witness; the Governor would've brought immense pressure on [Haeg's] judge and prosecutor to make an example of him." Apx.I.

Cole didn't dispute testimony he couldn't enforce the PA because he "needed to be able to make deals with the prosecution" after Haeg's case. Apx.I.

Witnesses present when the PA failed testified Cole said the PA couldn't be enforced other then "calling Leaders boss" and that he "couldn't piss Leaders off"; Haeg wanted

the PA enforced at any cost or risk. Zellers testified he cooperated and gave a statement because Haeg's PA statement implicated him. Apx.I.

> *Haeg*: "If Brent Cole had not had me give my statement to the prosecution would you have ever done so?"
>
> *Zellers under oath*: "No."
>
> *ABA arbitrator Metzger*, "You decided to cooperate with law enforcement authorities. Is that right?"
>
> *Zellers under oath*: *"Based on the fact that Mr. Haeg had already cooperated with the law enforcement."* Apx.I.

Cole's one witness, Fitzgerald, testified neither Haeg's nor Zellers statements were used; Zellers cooperated and gave a statement because of Haeg's PA statement.

> *Haeg:* "Would you have had Tony Zellers give a statement to prosecution ... if Brent Cole had not have me first give a statement implicating Tony?"
>
> *Fitzgerald*: "[C]ertainly *the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit."* Apx.I.

Fitzgerald's prior on record testimony at Zellers January 13, 2005 sentencing:

> *Fitzgerald:* "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue...the government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg." Petition No. 08-1108

On May 24, 2006 Haeg filed to represent himself and on June 21, 2006 COA remanded for DC hearing. Magistrate Woodmancy was assigned. On June 26 and June 30, 2006, citing apparent bias, Haeg filed affidavits to recuse him to no effect. Apx.U.

At Haeg's August 15, 2006 representation hearing Osterman testified Cole and Robinson didn't act in Haeg's interest or direction; he could see why Haeg thought there was a conspiracy to harm him; what Cole and Robinson did to represent Haeg was wrong; and he wouldn't do anything that would affect Cole and Robinson. Petition No. 08-1108.

After ruling Haeg had delusions of conspiracy, the DC ordered psychiatric evaluation before allowing self-representation. On August 24, 2006 Dr. Tamara Russell, a leading psychologist, determined there was almost certainly a conspiracy between Haeg's attorneys and the SOA to deprive Haeg of a fair trial. Petition No. 08-1108.

On September 18, 2006 the SOA filed a 14-page *opposition* to Haeg representing himself. Petition No. 08-1108.

On October 5, 2006 DC granted self-representation.

Haeg immediately filed numerous motions for return of property, to stay appeal pending PCR, to correct illegal sentence, to stay license suspension/revocation and to supplement record. Petition No. 08-1108.

COA denied or refused to address all. Petition No. 08-1108.

On August 26, 2006 the ABA arbitrators rendered a decision adverse to Haeg and awarded Cole $2689.19, even though Cole had never asked for more money Apx.C.

On September 18, 2006 Haeg appealed the arbitrators decision to Kenai Superior Court, claiming fraud/undue means.

On June 15, 2007 Kenai Superior Court issued an adverse decision in Haeg's arbitration appeal. Apx.B.

On June 25, 2007 Haeg appealed the Kenai Superior Court's decision to the ASC, claiming fraud/undue means.

On February 5, 2007 COA remanded to DC for property hearing – only after Haeg stated since no hearing was being provided he would just physically go get his property back from impound. Petition No. 08-1108. On March 13, 2007 DC denied allowing witness confrontation, witness or evidence presentation, and/or oral argument during Haeg's hearing. Petition No. 08-1108. On April 12, 2007 COA denied Haeg's Petition for Review of DC denial of effective hearing. Petition No. 08-1108. On May 25, 2007 the ASC denied Haeg's Petition for Hearing of the DC denial of effective hearing. Petition No. 08-1108.

On July 23, 2007 the DC denied Haeg the return of property and ruled statutes were constitutional. Petition No. 08-1108.

On August 17, 2007 DC denied Rehearing. Petition No. 08-1108. Haeg appealed and the COA combined this appeal (A-10015) with his criminal appeal (A-9455).

About February 26, 2008 Jackie Haeg found Haeg's PA statement, submitted November 8, 2004, *was missing from the official record while paperwork documenting submission remained.* Apx.K. On March 7, 2008 Haeg emergency motioned the record be reconstructed before his reply brief was due on March 17, 2008. On March 26, 2008, *after Haeg's reply brief was already submitted,* the COA reconstructed the record. Petition No. 08-1108.

On September 10, 2008 the COA rendered adverse judgment in A-9455/A-10015. Petition No. 08-1108. On September 26, 2008 they denied Petition for Rehearing. Petition No. 08-1108. On December 1, 2008 the ASC denied Haeg's Petition for Hearing. Petition No. 08-1108.

On December 2, 2008 the SOA asked Haeg be immediately incarcerated, regardless if he wished to appeal to the United States Supreme Court. On January 26, 2009 the SOA presented evidence Haeg had no right to ask for review by the Supreme Court, his chance of being heard by the Supreme Court was very low, Haeg's appeal was years old and punishment was overdue, and there was no limit on how long Haeg could wait to ask for review. Haeg argued *Ak Appellate Rule 206(a)(1)* required imprisonment be stayed, he had a right to ask for review no matter what the odds were the Supreme Court would hear him, and *Supreme Court Rules 13 and 15* placed specific time limits for him to ask for review. Haeg was ordered to prison on

March 2, 2009, over his objections that since he represented himself he would be unable to effectively file his petition, motions, corrections, or replies. Apx.V. The Court refused Haeg's request specific reasons be given for denying stay.

On January 30, 2009, four months after oral arguments and just four days after Haeg was ordered to jail the ASC issued an adverse decision in Haeg's arbitration appeal – failing to address the issue of fraud/undue means. Apx.A.

On February 5, 2009 Haeg filed a Petition for Rehearing of the ASC adverse arbitration decision Apx.W. On February 23, 2009 the ASC denied review. Apx.D.

## ARGUMENT

**1. While Cole was Haeg's attorney Haeg asked Cole, month after month before charges were filed, if there was any way to ask for or get his plane back because it was his primary means to provide a livelihood.** Apx.H, I, E.

Over and over Cole told Haeg there was no way to ask for or to get the plane back, even though he knew Haeg needed the plane to provide a livelihood and all seizure affidavits falsely claimed the evidence was found where Haeg hunted and guided. Apx.H, I.

> *Alaska Rule of Criminal Procedure 37(c)*: Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the

property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

At arbitration Cole testified Haeg had no right to a hearing after plane seizure and Alaska law prevented Haeg from getting his plane back. Apx.I.

Yet all controlling caselaw holds the opposite is true:

> Waiste v. State 10 P.3d 1141 (Ak 2000): "This courts dicta...*and the persuasive weight of federal law*, both suggest that the Due Process Clause of the Alaska Constitution should *require* no more than *a prompt postseizure hearing*.
>
> *[G]iven the conceded requirement of a prompt postseizure hearing* on the same issues, in the same forum, *"within days, if not hours,"* the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier.
>
> The State does not discuss the private interest at stake, and Waiste is plainly right it is significant: even a few days lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income.
>
> An ensemble of procedural rules bonds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The

rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, *to allow release of the vessel on bond, and to afford a prompt postseizure hearing."*

County of Nassau v. Canavan, 2003 N.Y. Int. 0139 (Nov. 24, 2003). "While we disagree that due process mandates a hearing prior to the initial seizure, *we conclude that a prompt post-seizure hearing is required in all cases."*

Fuentes v. Shevin, 92 S. Ct. 1983, 407 U.S. 67 "For more than a century the central meaning of procedural due process has been clear: *'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.'* ... It is equally fundamental that the right to notice and an opportunity to be heard *'must be granted at a meaningful time and in a meaningful manner.'"*

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985); Stypmann v. City and County of San Francisco, 557 F.2d 1338 (9th Cir. 1977) and Lee v. Thorton, 538 F.2d 27 (2d Cir. 1976)."Where property allegedly used in an illicit act is confiscated by government officials pending a forfeiture action, no notice or hearing is necessary prior to the seizure. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974). *However, when the seized property is used by its owner in*

*earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent."*

Sniadach v. Family Finance Corp. 395 U.S. 337 (1969) "[P]rejudgment garnishment of wages procedure, with its obvious taking of property without notice and prior hearing, violates the fundamental principles of procedural due process... *in the interim the wage earner is deprived of his enjoyment of earned wages without any opportunity to be heard and to tender any defense he may have, whether it be fraud or otherwise.*

*"The idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below the poverty level."*

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.

It is irrefutable Cole's arbitration testimony, that Haeg had no right to a postseizure hearing and/or that law prevented Haeg from getting his plane back, was false.

**2. At arbitration Cole and Cole's one witness, attorney Kevin Fitzgerald, testified neither Haeg's nor Zeller's statements were used against Haeg or Zellers.** Apx.I.

Yet at Zellers previous sentencing hearing *Fitzgerald, on the record, testified to the following*:

> *Fitzgerald:* "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he fact of the matter is [they] provided the information and frankly the government was free to do whatever it was goanna do with that information and *as is demonstrated they used it to charge additional chargcs against both Mr. Zellers and Mr. Haeg.*"

*All informations charging Haeg and Zellers specifically quoted both statements as the only probable cause for most of the charges and as primary probable cause for the rest.* Apx.J.

In addition, both Fitzgerald and Zellers testified that the reason Zellers agreed to cooperate with the SOA was Haeg's prior statement, which implicated Zellers. Apx.I. Zellers subsequent cooperation included testifying against Haeg at Haeg's trial, testimony which is irrefutably a fruit of Haeg's statement.

> Alaska Rule of Evidence 410: Inadmissibility of Plea Discussions in Other Proceedings. (a)

*Evidence ...of statements or agreements made in connection with any of the foregoing pleas or offers, isn't admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere...*Commentary To foster negotiations *the rule provides that nothing that is said during plea bargaining may be used against the accused in any proceeding, whether criminal, civil or administrative. Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.*

Kastigar v. United States (1972) 406 US 441, 453 "[Use and derivative use immunity] *prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness."*

Counselman v. Hitchcock (1892) 142 US 547, 564 "This total prohibition on use provides a comprehensive safeguard, *barring the use of compelled testimony as an 'investigatory lead' also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures."*

> Daly v. Superior Court (1977) 19 Cal.3d 132, 145 "[T]he very existence of such testimony may present serious problems of *proving* its complete independence from evidence introduced in the criminal proceeding."

It is irrefutable Cole and Fitzgerald's arbitration testimony, that Haeg and/or Zellers' statements were *not* used against Haeg and/or Zellers, was false. Because of his prior testimony at Zellers sentencing, it is irrefutable that Fitzgerald's knew his arbitration testimony was false when he gave it. Because of the specific use of Haeg's statement in every information filed it is irrefutable Cole knew his arbitration testimony was false when he gave it.

**3. At arbitration Cole testified he did not have to obey a subpoena to Haeg's sentencing because "I didn't think I would be a good witness".** Apx.I.

Haeg had subpoenaed Cole to answer 56 written questions under oath about his representation of Haeg and all he had Haeg do for a PA he said could not be enforced. Apx.Q, R. Because Cole did not appear Haeg did not receive credit for the year of guiding he had already given up for the PA. Apx.I. Haeg had a constitutional right to compel witnesses in his favor and a constitutional right to credit for the year already given.

Cole's testimony at arbitration proves the value he would have been to Haeg at Haeg's sentencing:

> *Cole: I don't think he [Leaders] gave him [Haeg] credit for the year he got off. So he [Haeg] effectively got 6 years.*

*Shaw:* Have you had cases in which judges made the license suspension retroactive...

*Cole:* Oh yeah.

*Shaw:* ... to a date when somebody voluntarily stopped hunting?

*Cole*: *And he [Leaders] was goanna do it in this case too.* Apx.I.

North Carolina v. Pearce, 395 U.S. 711 (1969) "[T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it. *We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence..."*

It is irrefutable Cole's arbitration testimony he did not have to obey the subpoena was false.

**4. At arbitration Cole testified he didn't think the SOA falsifying evidence locations to Haeg's hunting and guiding area would support a motion to suppress.** Apx.I.

Yet the false evidence location was the very reason for the charges filed against Haeg.

*SOA testimony*: "Based on my [Trooper Gibbens] experience, there is a clear economic incentive for Haeg... to eliminate

> or reduce predators from this area, which could potentially increase numbers of trophy animals for [Haeg] to harvest with clients."
>
> *Leaders,* "[T]he great economic benefit Haeg received from killing wolves where he guides." Petition No. 08-1108.

The SOA continued to falsely testify at trial about evidence locations, and upon cross-examination admitted they had known all along the evidence locations were false. Petition No. 08-1108.

> Mooney v. Holohan, 294 U.S. 103 (1935) "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, *has contrived a conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured,* and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process."
>
> Napue v. Illinois, 360 U.S. 264 (1959) *"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. "*

Haeg was then convicted – *and the judge cited the false testimony as the specific reason for Haeg's severe sentence – "because Haeg took most, if not all the wolves where he hunts... in GMU 19C."* Petition No. 08-1108.

*Yet not one wolf was taken where Haeg guided or hunted.* Petition No. 08-1108.

All authorities hold intentional and material falsification of search warrants affidavits renders the warrants invalid.

> Mapp v. Ohio, 367 U.S. 643 (1961) *"[A]ll evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state."*
>
> Olmstead v. U.S., 277 U.S. 438, 485 (1928) Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise."
>
> U.S. v. Hunt, 496 F.2d 888 (5th 1974) *"If affiant intentionally makes false statements to mislead judicial officer on application for search warrant, falsehoods render warrant invalid whether or not statements are material to establishing probable cause."*
>
> State v. Malkin, 722 P.2d 943 (Ak. 1986) *"Search warrant must be invalidated, and*

*evidence seized pursuant thereto must be suppressed, whenever supporting affidavit contains intentional misstatements, even though remainder of affidavit provides probable cause for warrant."*

Cole's arbitration testimony, that the falsification of the evidence locations would not support a motion to suppress, was irrefutably false.

**5. During cross-examination Cole was proven to have testified falsely at arbitration about numerous other issues.**

False testimony: he had told Haeg and numerous other witnesses a motion could be filed to enforce the PA Apx.H, I; Haeg didn't want to enforce the PA because it would cost too much Apx.H, I; Haeg didn't want to enforce the PA because of the risk Apx.H, I; Haeg never had a PA Apx.H, I; he had told Haeg before November 8, 2004 that the SOA was going to break the PA by amending the already filed charges to charges that were far more severe (meaning the PA was only in place for "about one week" - instead of it being in place from August 27, 2004 until November 8, 2004, during which time Haeg gave up nearly 100% of his yearly income in reliance on it because the guided hunting seasons are primarily August, September, and October Apx.H, I; Haeg accepted "another option" then the original PA (meaning the original one would not have to be enforced) Apx.H, I; he didn't know that Haeg might want a trial Apx.H; and a court would not enforce a PA no matter how much detrimental reliance a defendant put on it Apx.I.

## THE LAW

Alaska statutes state arbitration awards *shall* be vacated if they are a product of fraud or undue means.

> AS 09.43.120. Vacating An Award. (a) On application of a party, the court shall vacate an award if. (1) the award was procured by fraud or other undue means ...

It is irrefutable that, because of Cole and Fitzgerald's false arbitration testimony, the arbitration award, incredibly favorable to Cole, was a product of fraud and undue means.

It is irrefutable that if the arbitration award is not vacated, as Haeg has applied, Haeg will be denied due process and the equal protection of the law.

## PREJUDICE

Haeg was using his plane and other property as his primary means to provide a livelihood at the very time of seizure. Haeg's wife also depended on the plane and property for her primary means to provide a livelihood for their daughters – as she also worked full-time in their hunting guide business. The loss of their primary business property for the years before Haeg was charged or convicted was devastating to the Haeg family – and severely crippled Haeg's ability to put up a defense.

> *Alexander Hamilton:* "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

For the SOA and Cole to tell Haeg that there was no hearing to protest or get the plane and property back by bonding, when there irrefutably was, is an unacceptable injustice - doubly so when the seizure was based upon affidavits falsifying evidence locations that were material.

This unacceptable injustice doubles again when the SOA and Cole asked Haeg to give up a year guiding for a PA, and then, after the year was past, break the PA and tell Haeg nothing could be done. This, combined with the property deprivation, finished off the rest of Haeg's financial resources before trial.

This unacceptable injustice doubled again when the SOA and Cole asked Haeg to give a statement for the PA, and, after the statement was given, break the PA and then use Haeg's statement against him at trial.

This unacceptable injustice doubled again when Cole failed to appear at Haeg's sentencing to testify about the PA and all Haeg had done for it - and that the SOA broke it without contest – and the Haeg family, without credit for the year already given or the lesser charges that year guaranteed, was sentenced to 5 more years without their guiding license – with the specific justification the false evidence locations moving the evidence to Haeg's hunting and guiding area. Petition No. 08-1108.

Cole's arbitration testimony proves everyone knew how devastating the loss of license was:

> *"[T]he troopers know it's the license. That's what's valuable, that's what hits home... they know being put out of business means - you know and for 5 years it is almost impossible to come back."* Apx.I.

## MOTIVE?

The WCP is controversial worldwide. Ashley Judd is the most recent celebrity advocating against the WCP on national TV. Animal rights groups have raised millions of dollars and filed numerous lawsuits to stop it. Twice statewide ballot initiatives have stopped it, only to be reversed by Alaska's legislature. The Department of Fish and Game and the BOG testified death threats were received over it and "everyone" was watching Haeg's case.

It would have been devastating to the WCP for it to be revealed the SOA was telling permittees more wolves had to be taken to meet objectives and if permittees took wolves outside the WCP area to just mark them as being taken inside - so the program wouldn't seem ineffective and shut down. Apx.E. Ineffectiveness was a specific reason for opposition to the program.

Ramifications are incomprehensible if it is admitted Alaska's top law firms conspired with each other and the SOA to cover this up – by framing one of their own clients.

Is this why Cole told Haeg the SOA telling him if he ended up taking wolves outside the area to just mark them as being taken inside was not a defense when it irrefutably was? Apx.H.

Is this why the SOA moved all evidence to Haeg's hunting and guiding area and then claimed that because Haeg took the wolves in the area benefiting his hunting guide business he could and should be charged with hunting and guiding crimes? Petition No. 08-1108.

Is this why Cole and Fitzgerald testified the Governor used immense pressure on the prosecutor and judge to make an example of Haeg? Apx.I.

Is this why, when over Cole's objections Haeg made what the SOA told him about taking wolves outside the area but marking them inside a part of the official record, this record vanished yet documentation proving submission to the court remained? Apx.E, K.

Is this why both the SOA and Cole, after Haeg specifically asked if there was, told Haeg there was no opportunity for a prompt postseizure hearing – *with the SOA's additional argument any prompt postseizure hearing notice was to be given by Cole, who was hired by Haeg weeks after seizure – Cole then told Haeg there was no right to a prompt postseizure hearing, no right to seek to bond the property out, and law prevented property return?* Apx.H, I.

> Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1 (1978) *The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending "hearing."*
>
> Baldwin v. Hale, 68 U.S. 223 (1863): "Parties whose rights are to be affected are entitled to be heard; *and in order that they may enjoy that right they must first be notified.* Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense."

Is this why all Haeg's attorneys told Haeg there was no way to protest the false evidence location? Apx.I. All authorities hold you "have everything to gain and nothing to lose" by filing a motion to suppress. Yet Cole stated something could be lost in Haeg's case - *Cole's ability to make "deals" with the SOA after Haeg's case was finished.* Apx.H, I.

Is this why Cole never told Haeg the WCP law specifically prevented Haeg from being charged with hunting or hunting guide crimes, had specific penalties that could be imposed for violations of the WCP, and that this would have irrefutably protected Haeg's business?

> 5 AAC 92.110(m): A wolf population reduction or wolf population regulation program established under this section *is independent of, and does not apply to, hunting* and trapping authorized in 5 AAC 84 - 5 AAC 85.
>
> 5 AAC 92.039(h): Permit for taking wolves using aircraft (h) In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title [Chapter 5]. [AS 16 and Chapter 5 cover all hunting]
>
> AS 16.05.783: (a) A person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne. However, the Board of Game may authorize a predator control program as part of a game management plan that

> involves airborne or same day airborne shooting if the board has determined based on information provided by the department (1) in regard to an identified big game prey population under AS 16.05.255(g) that objectives set by the board for the population have not been achieved and that predation is an important cause for the failure to achieve the objectives set by the board, and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives;... *(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both.*

Is this why Cole told Haeg to make a PA to hunting and guiding crimes, to give a statement and year of guiding for it, that nothing could be done when the SOA broke the PA after the year was gone and statement had been given -- when Haeg specifically asked, and that the SOA could use Haeg's PA statement against Haeg after the PA was broken? Apx. H.

> U.S. v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974) *"[W]hen the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance."*

> Smith v. State, 717 P.2d 402 (Alaska 1986) "The fact that Smith was legally entitled to persist in his plea of innocence is, in our

view, determinative of his claim of ineffective assistance of counsel.

*We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions.*

We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court... Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement."

Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). "The State may withdraw from a plea bargain arrangement at any time prior to, but not after, the actual entry of the guilty plea by defendant or any other change of position by him constituting detrimental reliance upon the arrangement. Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement."

Is this why Cole told Haeg *"I can't do anything to piss Leaders off because after your case is done - I still have to be able to make deals with him"* – and then proved this was the case by doing absolutely nothing to advocate for Haeg, in fact acting exactly like prosecutor Leaders', but worse because he lied to Haeg about all Leaders unconstitutional and malicious actions, and Haeg, because he was paying Cole as his advocate, believed him? Apx.H, I.

> U.S. v. Cronic, 466 U.S. 648 (1984): The adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted - even if defense counsel may have made demonstrable errors- the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated.
>
> "More specifically, the right to the assistance of counsel has been understood to mean that *there can be no restrictions upon the function of counsel in defending a criminal prosecution* in accord with the traditions of the adversary fact finding process that has been constitutionalized in the Sixth and Fourteenth Amendments." 422 U.S., at 857. See also *Jones v. Barnes*, 463 U.S. 745, 758 (1983) (BRENNAN, J., dissenting) (*"To*

*satisfy the Constitution, counsel must function as an advocate for the defendant, as opposed to a friend of the court"*); Ferri v. Ackerman, 444 U.S. 193, 204 (1979) ("Indeed, *an indispensable element of the effective performance of [defense counsel's] responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation").*

Cole did not act as a friend of the court in Haeg's case; he acted as a friend of the prosecution and even stated he could not act independently from or oppose prosecution.

Holloway v. Arkansas, 435 U.S. 475 (1978) "*Joint representation of conflicting interests is suspect because of what it tends to prevent the attorney from doing.* The mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee when the advocate's conflicting obligations have effectively sealed his lips on crucial matters. [I]n a case of joint representation of conflicting interests *the evil - it bears repeating - is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process.* It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's

representation of a client. And *to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible.* Thus, an inquiry into a claim of harmless error here would require, unlike most cases, unguided speculation."

Powell v. State of Alabama, 287 U.S. 45 (1932) "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel *he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.* He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

Because of Cole Haeg was put on trial without a proper charge, convicted upon false and inadmissible evidence, and never used a perfect defense.

Is this why Cole never appeared to testify about all this at Haeg's sentencing, even though he had been subpoenaed? Apx.Q, R, T.

Is this why the SOA testified they had no idea why Haeg had given up guiding for a whole year before he was sentenced and asked Haeg be sentenced to 5 more years, when Cole later testified at arbitration he told the SOA Haeg was giving up that year for the PA and the SOA had agreed to give Haeg credit for that same year? Apx.I.

Is this why Cole and Fitzgerald testified the last thing a defense attorney would ever do is make an enemy out of the prosecutor, that trying to enforce a PA would make an enemy out of a prosecutor, and advocating for a client would make an enemy out of a prosecutor? Apx.H, I.

Is this why Osterman, Haeg's third attorney, first stated Haeg's first attorneys "sold Haeg out...loaded the dang dice so the State would always win"..."when [the court] sees the sellout your conviction will be overturned"; afterward stated if Haeg showed the court the "sellout" they would "throw out" Haeg's appeal; and told Haeg that Haeg's 2nd attorney, Robinson, "ran" the Alaska Bar Association? Petition No. 08-1108.

Is this why, in a sworn response to Haeg's grievance complaint, prosecutor Leaders testified Haeg had no right to a prompt postseizure hearing, that it would have "usurped executive authority" to allow Haeg to bond his plane out, and that he never used Haeg's statement – when every information he authored and filed against Haeg - including the one Haeg went to trial on - specifically stated that Haeg gave a statement and that this statement was the probable cause for the charges filed against Haeg?

> *Leaders*: "Haeg is also mistaken in his belief that I wrongly used information obtained during plea negotiations to prosecute him in his criminal case. It is true that part of plea negotiations with both Haeg and his codefendant Tony Zellers required each of them to provide truthful statements about their violations. Both Haeg and Zellers provided these interviews. Again, the fact that Haeg nor his attorneys have raised this issue in pre or post trial motions or appeals is indicative of the fact that there was no violation. Any attempt to use Haeg's plea negotiation statements would have resulted in a motion to suppress." Apx.J.

Is this why Cole and Fitzgerald gave perjured testimony collaborating prosecutor Leaders false claim Haeg's statement was not used? Apx.I.

Is this why the evidence the SOA encouraged participants/permittees to take wolves outside the WCP area but claim they were taken inside the area disappeared from all record and false evidence that Haeg was some renegade hunting guide feathering his own nest appeared everywhere as if by magic? Petition No. 08-1108.

Is this why Robinson, for his "no-doubt" defense the court lacked subject-matter jurisdiction, told Haeg he must hide everything done for the PA the SOA broke, because this would "admit" Haeg submitted to subject-matter jurisdiction. Robinson even told Haeg no issue other then subject-matter jurisdiction was worth appealing. Petition No. 08-1108. Yet it's irrefutable there was subject-matter jurisdiction, no matter what Haeg, who was charged with misdemeanors in district court, did or didn't do:

AS 22.15.060. Criminal Jurisdiction. (a) "The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor..."

Is this why Robinson showed Haeg law that no attorney could be sued as long as Haeg remained convicted?

Shaw v. State of Alaska Public Defender Agency (10/8/93), 861 P 2d 566: Compton, Justice, dissenting: *"The burdens imposed on these plaintiffs, coupled with the advantage given former defense attorneys, virtually forecloses attorney malpractice suits arising out of criminal representation.* No public policy, nor any case law, can justify this result. I am unpersuaded by arguments in support of these further limitations, and therefore dissent."

Is this why Robinson told Haeg nothing would be done because "the good old boys network of Troopers, prosecutors, and judges will protect their own"? Petition No. 08-1108.

Is this why numerous attorneys, after Haeg explained what happened with Cole, Robinson, and Osterman, refused to represent Haeg – stating, "big state, small attorney pool"?

Is this why Alaska's courts and Bar Association has failed to address these violations and sealed the record so Haeg couldn't present evidence of the rights deprivation and conspiracy to do so to the Department of Justice? Apx.X.

**Title 18 U.S.C. § 241.** "Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death."

**Title 18 U.S.C. § 242.** "Deprivation of rights under color of law: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both;..."

Is this why in "Operation Greylord" the State of Illinois admitted they were unable to address judicial corruption and asked for federal help, with these results?

> "92 officials indicted, including 17 judges, 48 lawyers, 8 policemen, 10 deputy sheriffs, 8 court officials, and 1 state legislator. Nearly all were convicted, most of them pleading guilty."

It is apparent that, in Alaska, if you are an attorney or State Trooper you are above the law. As important as the SOA thinks the WCP is it cannot be run and protected at the expense of crushing the United States Constitution, entire families, and the people's trust.

## CONCLUSION

Haeg's case is so disturbing and incomprehensible it is only by looking to what our founding fathers would have done can a course be set. There is no doubt defense attorneys conspiring with a State to prosecute their own clients in violation of numerous constitutional rights would have been shocking and unacceptable to them. There is no doubt our founding fathers would have wished us to address this at any and all cost – for what would their immense sacrifice of lives mean, providing us with a constitution guaranteeing fundamental fairness, if we failed to protect it when numerous basic rights were being stripped out of it by intentional and malicious means? There is no doubt our founding fathers would counsel appealing to the highest levels; but not stopping short of justice if appeals failed - as they had not stopped when their appeals failed.

Haeg thinks of how easily the SOA and Cole preyed upon Haeg's ignorance and trust, destroying he and his wife's hopes and dreams - driving them to the brink of suicide as they became unable to provide their daughters a warm bed at night or enough to eat – *all because Haeg did exactly what the SOA and Cole asked him to do.* Apx.E, H.

Haeg thinks of the tape recordings made while Cole was still his attorney - recordings proving Haeg wanted to protest that the SOA encouraged him to take wolves outside the area but claim they were taken inside to make the WCP seem effective; wished to protest the falsification of the evidence locations to his hunting guide area; wished to ask for or bond out his plane and property so he could continue making a living; wished to protest being charged with hunting and guiding crimes; wished to protest the SOA breaking the PA; wished to protest the use of his PA statement; wished Cole to testify at his sentencing; and wished to get credit for the year guiding he gave for the PA. Apx.H.

Then, Haeg thinks about how Cole deceived and lied to him and his wife at every turn to allow the destruction of everything they had worked their whole lives for. Apx.H, I.

Haeg thinks of how his family's life would not be destroyed had he hired no attorney instead of hiring 3 of Alaska's best for $100,000.00.

> State v. Sexton, 709 A.2d 288 (N.J. Super. CT. App. Div. 1998): *"Court found both prosecutorial misconduct and ineffective assistance which created the 'real potential for an unjust result'."*

> U.S. v. Marshank, 777 F. Supp. 1507 (N.D. Cal. 1991). *Government's collaboration with defendant's attorney during investigation and prosecution of drug case violated defendant's Fifth and Sixth Amendment rights and required dismissal of the indictment.* "While the government may have no obligation to caution defense counsel against straying from the ethical path, it is not entitled to take advantage of conflicts of interest of which the defendant and the court are unaware. In light of the astonishing facts of this case, it is beyond question that [counsel's] representation of [defendant] was rendered completely ineffectual and that the government was a knowing participant in the circumstances that made the representation ineffectual."

Haeg and others think it the same as an entire family going to a doctor for help and being prescribed cyanide and strychnine instead of antibiotics and penicillin. Many Alaskan's, stating they realize the gravity of letting the rule of law die if all courts refuse to act on the numerous and fundamental constitutional violations, have asked Haeg to again travel to Anchorage with them in order to recover his property from the State Troopers – after informing national media and the United States Congress of the circumstances – and telling Haeg that this time they will not be satisfied or leave until the rule of law is restored and Haeg's property is recovered.

## OPPOSITION WAIVED IN No. 08-1108

On March 24, 2009 the SOA filed an opposition waiver to Haeg's petition for writ of certiorari of his

conviction. Under Rule 15.2 this means any perceived misstatement of fact or law that bears on what issues properly would be before the Court if certiorari were granted may be waived. The SOA apparently thinks Haeg made no misstatements of fact or law that would prevent the issues from being heard. In addition, "Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived".

In other words the SOA is not contesting that Haeg gave a statement and year of guiding for a PA; that the SOA broke the PA, uncontested by Cole after the guide year was gone; that the SOA used Haeg's PA statement against Haeg at trial; that the SOA used materially false evidence locations on all seizure affidavits and testified to the same false locations at Haeg's trial; admitted afterward they knew the locations were false when they gave the sworn testimony; and that no hearing or notice of a hearing was given even after Haeg asked when he could get his airplane back because he needed it to provide a livelihood.

If the SOA is not contesting these issues how is it possible Cole did not contest when he was Haeg's attorney? *If the SOA is not contesting these issues how can Haeg's conviction and sentence not be reviewed and/or overturned?*

## EVADING REVIEW

Haeg thinks of how few non-attorney defendants could muster the years, money, and resources it has taken to prove what happened and appeal it to this Court – that if this opportunity is wasted this incredible injustice will undoubtedly continue to destroy more families.

## ADDITIONAL REASONS TO ACCEPT PETITION

It boils down to this: *What good are the protections of United States Constitution and the thousands of decisions made by this Court if they do not have to be obeyed?* What could be more dangerous to the Constitution then to have those in charge of enforcing it to be instead intentionally and knowingly violating it? If people have immunity to do this, as is the case to this point, the Constitution is dead.

Without doubt our founding fathers would want this death to echo around the world forever. Haeg, after careful thought of all his family has lost in the past five years and will yet lose, after discussions with other Alaskans about consequences if something isn't done, and in consideration of beautiful wife and children, is going to devote his life to make certain the first echo is heard loud and clear.

Haeg humbly begs this Court to read the arbitration transcriptions Apx.I, recordings of Cole Apx.H, read both this and petition No. 08-1108, accept both, and then consider them together so the full enormity of what happened can be realized – and grant justice, the rule of law, and hope to Alaska before more families are crushed.

> "All it takes for evil to flourish is for good men to do nothing." - Edmund Burke

I declare under penalty of perjury the forgoing is true and correct. Executed on May 14, 2009.

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249 and 262-8867 fax

## APPENDIX A

**January 30, 2009**- In the Supreme Court of the State of Alaska, Opinion No. 6334 – January 30, 2009, Supreme Court No. S-12771, Superior Court No. 3KN-06-844 CI.

DAVID S. HAEG, Appellant v. BRENT R. COLE, Appellee

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Harold M. Brown, Judge.

Appearances: David S, Haeg, pro se, Soldotna, Brent R, Cole, pro se, Anchorage.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Carpeneti, and Winfree, Justices.

PER CURIAM

David Haeg appeals the decision of the superior court that affirmed an arbitration award regarding fees charged by Haeg's former attorney, Brent Cola. Haeg hired Cole to represent him in a criminal case and paid for most of Cole's services. When plea negotiations broke down, Haeg fired Cole and refused to pay the outstanding balance of Cole's fee. Haeg hired another attorney, went to trial, and lost. Haeg then filed a fee arbitration proceeding with the Alaska Bar Association, arguing that Cole's services were defective and that Cole should return the fees Haeg had paid. The arbitration panel decided in Cole's favor and awarded Cole the fees still outstanding. Haeg appealed to the superior court. The superior court modified the amount of the award to remedy a clerical error and otherwise affirmed the panel's decision. Haeg now appeals the

superior decision to this court. With one exception, we affirm the decision of the superior court for the reasons expressed in the written decision of the superior court.[1]

The exception concerns the arbitration panel's affirmative award to Cole of fees still due him. This amount, as corrected by the superior court, was $1,689,1. Under the Revised Uniform Arbitration Act applicable in Alaska, a reviewing court is required to modify or correct an award if the arbitrator has made the award on a claim not submitted to the arbitrator.[2] This statute is applicable to attorney fee arbitration awards under Alaska Bar Rule 40(t).[3] Cole did not present a claim for unpaid fees to the arbitration panel. The award to him of unpaid fees was therefore an award on a claim not submitted.[4] On remand we direct that the order of the superior court be modified by deleting the affirmative award of fees in favor of Cole.

For these reasons the decision of the superior court is MODIFIED in one respect and as so modified, the decision is AFFIRMED, This case is REMANDED with directions to

---

[1] The superior court's decision is appended.

[2] AS 09.43.510(a)(2).

[3] Alaska Bar Rule 40 implies that only questions submitted should be decided. In relevant part, Bar Rule40(q) states: "The decision will be in writing . . . the decision will include . . . the findings of the arbitrator or panel on all issues and questions submitted which are necessary to resolve the dispute." Alaska Bar R. 40(q)(3).

[4] Haeg's petition for arbitration sought only the fees he had already paid Cole and stated that Cole did not seek any further payments from Haeg. Cole confirmed to the arbitration panel that he was not seeking unpaid fees. At one point in the proceedings members of the panel told Haeg that "the only subject here is ... [tlhe fee that you've already paid." We note that at oral argument before this court Cole also waived any interest in an affirmative recovery.

the superior court to modify the decision in accordance with this opinion.

## MEMORANDUM DECISION AND ORDER

David S. Haeg appeals the August 25, 2006 decision of the Alaska Bar Association Fee Arbitration Panel ("panel") awarding Brent Cole $2,689.19. The Appellant alleges ten points on appeal, arguing that the award was procured by fraud, there was corruption among the arbitrators, there was partiality among the arbitrators, the arbitrators exceeded their powers, the arbitrators' decision did not address the issues the appellant presented, the arbitrators did not make a referral to discipline the appellant's counsel, the decision did not reflect the evidence, the decision did not comply with the Alaska Rules of Professional Conduct or Alaska Bar Rule 40, a large portion of the official record of the proceedings has been lost, and that the decision and award are in violation of the U.S. and Alaska Constitutions.

For the reasons set forth below, the court modifies the judgment of the panel to reflect the correct judgment of $1,689.19.

## CASE HISTORY

Both parties offer their own versions of what occurred during the course of proceedings of the Appellant's criminal trial. However, the factual history of the Appellant's criminal case is a matter reserved for his criminal appeal. The only issue before this court on appeal is whether there is a basis to vacate or modify the panel's decision. Therefore, the court only offers an abbreviated case history to the point that it is relevant to the current appeal.

The Appellant, David Haeg, retained the Appellee, Brent Cole, as his counsel on April 9, 2004 after learning that he was the subject of an investigation concerning Fish and Game violations. The Appellant signed a fee agreement with the Appellee, agreeing to pay $200.00 per hour for the Appellee's services. The Appellee sent the Appellant monthly bills and represented the Appellant through the summer and fall of 2004. Both parties offer differing versions of events of how the criminal case progressed, but it appears that the panel accepted the version presented by the Appellee. The only facts that are relevant on this appeal are that the Appellant fired the Appellee during these criminal proceedings prior to the time a plea agreement could be entered, that the Appellant proceeded to take his case to trial with a new attorney, and that the Appellant was convicted at trial. The conviction led to the judge suspending the Appellant's hunting guide license for five years and forfeiting his PA- 12 aircraft.

The Appellant still had an amount left owing on his fee agreement when he fired the Appellee, which he refused to pay. The Appellee did not pursue the Appellant for this unpaid amount and appeared willing to write the losses off The Appellant then filed grievances against the Appellee with the Bar and requested that the Appellee be referred for discipline. The Appellant subsequently filed for fee arbitration in an amount that exceeded $5,000.00. Pursuant to Bar Rules, an arbitration panel was convened. After oral argument, the panel issued a decision on August 25, 2006 that awarded the Appellee the unpaid portion of his fee agreement. This appeal followed.

## STANDARD OF REVIEW

Alaska employs mandatory fee arbitration between clients and attorneys if a client commences such an action.[1] The court is to give great deference to the arbitrator's findings of fact and law, and is "loathe to vacate an award made by an arbitrator."[2] In reviewing the award of a fee arbitration committee, the court cannot review the panel's findings of fact, even if the findings were in gross error.[3] Further, the court cannot review the decision on its merits.[4] The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.[5] Therefore, in reviewing this appeal, the court will only vacate the award if it finds the Appellant has proven the factors under AS 09.43.120(a) and will only modify the award if the Appellant has proven the factors under AS 09.43.130(a).

## DISCUSSION

The Appellant uses his brief to argue the merits of his criminal case. However, the issue before this court is not whether the Appellant's conviction should stand. That issue is reserved solely for the Appellant's criminal appeal. The court further cannot reassess the evidence presented before the panel or the credibility of the witnesses. The court is limited to finding whether the award made by the

---

[1] Alaska Bar Rule 34(b).

[2] Butler v. Dunlap, 931 P.2d 1036, 1038 (Alaska 1997) (quoting Depart Of Pub. Safety v. Public Safety Employees, 732 P,2d 1090, 1093 (Alaska 1987)).

[3] Breeze v. Sims, 778 P.2d 215,217-18 (Alaska 1989).

[4] A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

[5] Alaska Bar Rule 40(a)(2).

arbitrators may be modified or vacated pursuant to AS 09.43.120 and AS 09.43.130.

The Appellant argues that the panel's decision should be vacated because the Appellee perjured himself at the panel. He also argues that the evidence he presented against the Appellee was numerous and of significant weight. He claims that the panel's acceptance of the Appellee's testimony over his evidence shows corruption and partiality on the part of the arbitrators. However, the fact that the arbitrators weighed the evidence in a manner unfavorable to the Appellant is not evidence of corruption. There is no doubt that the Appellant believes his evidence was more credible than that of the Appellee, but again, this court is without the authority to reassess the credibility of the witnesses or the weight of the evidence presented to the panel. Therefore, the court does not find the fact that the panel accepted the Appellee's testimony as more credible than the Appellant's evidence as an indication of corruption and will not vacate the award on this point.

The Appellant argues that the fact the panel consisted of two attorneys and one full-time court employee suggests partiality among the arbitrators for the Appellee. The court finds no merit to the Appellant's argument. Pursuant to Alaska Bar Rule 37(c), an arbitration panel consists of two attorneys and one member of the public. The fact that the panel consisted of attorneys and a court employee is not evidence of bias.

The Appellant argues that there is clear indication of bias and corruption among the arbitrators because their decision and award does not reflect the testimony and evidence the Appellant presented before the panel. The Appellant contends that he overwhelmingly proved that the Appellee perjured himself to the panel that the panel

ignored this evidence and helped the Appellee in his case. Again, this court does not reassess the weight of the evidence or review the facts presented to the panel. The fact that the panel accepted the Appellee's version of events does not indicate bias or corruption among the arbitrators.

The Appellant further contends that the panel was corrupt and bias because it stated that the Appellant only identified three failures of the Appellee when the Appellant argued he should be excused from paying the fee. The Appellant claims that he argued numerous other issues to the panel, reiterating that the Appellee perjured himself numerous times and that the Appellee intentionally lied to the Appellant during the course of his representation. Again, the fact that the panel chose to reject the Appellant's arguments is not evidence of bias or corruption. The panel expressly stated that it could not find evidence to support the Appellant's arguments during the arbitration. While the court again acknowledges that the Appellant believes he met this burden, it is without authority to reassess the panel's factual determination and does not find evident bias among the arbitrators in choosing to exclude some of the Appellant's arguments in its decision.

The Appellant offers other argument regarding evidence of bias and corruption among the arbitrators, but it is again repetitive of what has already been stated. Pursuant to AS 09.43.120(a), a court may only vacate the panel's award if: (1) the award was procured by fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the

hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection. This court cannot find that the Appellant has met his burden in proving evident partiality or corruption among the arbitrators. While the court acknowledges that the Appellant believes he presented sufficient evidence to support a different award, this court cannot reassess the facts presented to the panel. The court can only look to see if there was evident partiality and corruption among the arbitrators. Upon reviewing the record, the court is unable to make this determination and finds that the panel acted within their powers when making the award. Even if the Appellant presented a magnitude of evidence to the panel that supported his claim, this would not be enough for the court to vacate the award. This court is without authority to vacate an award due to "fraud or other undue means" even if the panel made gross errors in their decision.[6] The only argument the Appellant offers repeatedly to prove his contention of fraud, evident partiality, and corruption among the arbitrators is that the panel issued a decision in favor of the Appellee despite of what he claims is "overwhelming" evidence in support of his position. This is not evidence of "evident" partiality. For the court to find bias among the arbitrators on this basis would require the court to inquire into the merits of the panel's decision. As stated multiple times, this court is without authority to do so. Therefore, the court must defer to the panel and upholds the panel's decision to award the Appellee his fees.

---

[6] Alaska State Housing Authority v. Riley Pleas. Inc., 586 P.2d 1244, 1247 (Alaska 1978),

Finally, the Appellant contends that the panel exceeded its powers by awarding the Appellee funds that he never requested. He further argues that the arbitration panel awarded the Appellee a $1,000.00 more than the Appellee was owed. The Appellant suggests that this also demonstrated corruption on the part of the arbitrators, as the Appellee had never requested these fees.

The court disagrees that the panel exceeded its power to make this award. When the Appellant pursued fee arbitration, his fee agreement with the Appellee became a proper matter for consideration. The fact that the Appellee had elected not to pursue the Appellant for the remainder of his undue balance prior to the Appellant's commencement of this action did not constitute a waiver that would prevent the panel from considering this issue. At the panel, the arbitrators were presented with the parties' fee agreement. The Appellant did not dispute that he entered into a fee agreement for $200 per hour with the Appellee. The Appellant did not dispute the time sheets presented by the Appellee that demonstrated the time spent by the Appellee working on the Appellant's case. The Appellant only challenged a charge reflecting air travel to McGrath, and the Appellee agreed that this was an improper charge. The Appellant acknowledged that he had not paid the remainder left owing on the parties' fee agreement, which reflected an amount of $2,059.19. The Appellant only challenged the quality of the Appellee's services. The panel concluded that the Appellee had effectively represented the Appellant and awarded the Appellee the amount left owing on the parties' fee agreement.

The Appellant made his fee agreement with the Appellee a proper issue for consideration when he decided to pursue fee arbitration and cannot argue waiver now.

Therefore, pursuant to AS 09.43.120(a)(3), the court does not find that the panel exceeded their powers and will not vacate the award. However, pursuant to AS 09.43.130(a)(1), the court does find that the award should be modified due to an evident miscalculation on the part of the arbitrators, The panel's decision acknowledges that the Appellant had paid $11,329,81 to the Appellee for his services. The panel also acknowledges that the Appellee had charged the Appellant $13,389.00 for his services. The difference between these two amounts equal $2,059,19. The panel further credited the Appellant $370.00 for the Appellee's travel expenses. Therefore, the correct amount that should be awarded is $1,689.19. However, the court finds that this miscalculation in the panel's award was due to clerical error, and is not evidence of corruption or bias among the arbitrators.

DATED in Kenai, Alaska, this 15th day of June, 2007.

"s/"
HAROLD M. BROWN
Superior Court Judge

## APPENDIX B

**June 15, 2007** – In the Superior Court for the State of Alaska, Third Judicial District at Kenai, Case No.: 3KN-06844 CI.

DAVID S. HAEG, Appellant v. BRENT R. COLE, Appellee

### MEMORANDUM DECISION AND ORDER

David S. Haeg appeals the August 25, 2006 decision of the Alaska Bar Association Fee Arbitration Panel ("panel") awarding Brent Cole $2,689.19. The Appellant alleges ten points on appeal, arguing that the award was procured by fraud, there was corruption among the arbitrators, there was partiality among the arbitrators, the arbitrators exceeded their powers, the arbitrators' decision did not address the issues the appellant presented, the arbitrators did not make a referral to discipline the appellant's counsel, the decision did not reflect the evidence, the decision did not comply with the Alaska Rules of Professional Conduct or Alaska Bar Rule 40, a large portion of the official record of the proceedings has been lost, and that the decision and award are in violation of the U.S. and Alaska Constitutions.

For the reasons set forth below, the court modifies the judgment of the panel to reflect the correct judgment of $1,689.19.

### CASE HISTORY

Both parties offer their own versions of what occurred during the course of proceedings of the Appellant's criminal trial. However, the factual history of the Appellant's criminal case is a matter reserved for his

criminal appeal. The only issue before this court on appeal is whether there is a basis to vacate or modify the panel's decision. Therefore, the court only offers an abbreviated case history to the point that it is relevant to the current appeal.

The Appellant, David Haeg, retained the Appellee, Brent Cole, as his counsel on April 9, 2004 after learning that he was the subject of an investigation concerning Fish and Game violations. The Appellant signed a fee agreement with the Appellee, agreeing to pay $200.00 per hour for the Appellee's services. The Appellee sent the Appellant monthly bills and represented the Appellant through the summer and fall of 2004. Both parties offer differing versions of events of how the criminal case progressed, but it appears that the panel accepted the version presented by the Appellee. The only facts that are relevant on this appeal are that the Appellant fired the Appellee during these criminal proceedings prior to the time a plea agreement could be entered, that the Appellant proceeded to take his case to trial with a new attorney, and that the Appellant was convicted at trial. The conviction led to the judge suspending the Appellant's hunting guide license for five years and forfeiting his PA- 12 aircraft.

The Appellant still had an amount left owing on his fee agreement when he fired the Appellee, which he refused to pay. The Appellee did not pursue the Appellant for this unpaid amount and appeared willing to write the losses off The Appellant then filed grievances against the Appellee with the Bar and requested that the Appellee be referred for discipline. The Appellant subsequently filed for fee arbitration in an amount that exceeded $5,000.00. Pursuant to Bar Rules, an arbitration panel was convened. After oral argument, the panel issued a decision on August

25, 2006 that awarded the Appellee the unpaid portion of his fee agreement. This appeal followed.

## STANDARD OF REVIEW

Alaska employs mandatory fee arbitration between clients and attorneys if a client commences such an action.[1] The court is to give great deference to the arbitrator's findings of fact and law, and is "loathe to vacate an award made by an arbitrator."[2] In reviewing the award of a fee arbitration committee, the court cannot review the panel's findings of fact, even if the findings were in gross error.[3] Further, the court cannot review the decision on its merits.[4] The court can only review the decision based on the reasons set forth in AS 09.43.120 through AS 09.43.180.[5] Therefore, in reviewing this appeal, the court will only vacate the award if it finds the Appellant has proven the factors under AS 09.43.120(a) and will only modify the award if the Appellant has proven the factors under AS 09.43.130(a).

## DISCUSSION

The Appellant uses his brief to argue the merits of his criminal case. However, the issue before this court is not whether the Appellant's conviction should stand. That issue is reserved solely for the Appellant's criminal appeal. The court further cannot reassess the evidence presented

---

[1] Alaska Bar Rule 34(b).

[2] Butler v. Dunlap, 931 P.2d 1036, 1038 (Alaska 1997) (quoting Depart Of Pub. Safety v. Public Safety Employees, 732 P,2d 1090, 1093 (Alaska 1987)).

[3] Breeze v. Sims, 778 P.2d 215,217-18 (Alaska 1989).

[4] A. Fred Miller v. Purvis, 921 P.2d 610, 618 (Alaska 1996).

[5] Alaska Bar Rule 40(a)(2).

before the panel or the credibility of the witnesses. The court is limited to finding whether the award made by the arbitrators may be modified or vacated pursuant to AS 09.43.120 and AS 09.43.130.

The Appellant argues that the panel's decision should be vacated because the Appellee perjured himself at the panel. He also argues that the evidence he presented against the Appellee was numerous and of significant weight. He claims that the panel's acceptance of the Appellee's testimony over his evidence shows corruption and partiality on the part of the arbitrators. However, the fact that the arbitrators weighed the evidence in a manner unfavorable to the Appellant is not evidence of corruption. There is no doubt that the Appellant believes his evidence was more credible than that of the Appellee, but again, this court is without the authority to reassess the credibility of the witnesses or the weight of the evidence presented to the panel. Therefore, the court does not find the fact that the panel accepted the Appellee's testimony as more credible than the Appellant's evidence as an indication of corruption and will not vacate the award on this point.

The Appellant argues that the fact the panel consisted of two attorneys and one full-time court employee suggests partiality among the arbitrators for the Appellee. The court finds no merit to the Appellant's argument. Pursuant to Alaska Bar Rule 37(c), an arbitration panel consists of two attorneys and one member of the public. The fact that the panel consisted of attorneys and a court employee is not evidence of bias.

The Appellant argues that there is clear indication of bias and corruption among the arbitrators because their decision and award does not reflect the testimony and evidence the Appellant presented before the panel. The

Appellant contends that he overwhelmingly proved that the Appellee perjured himself to the panel that the panel ignored this evidence and helped the Appellee in his case. Again, this court does not reassess the weight of the evidence or review the facts presented to the panel. The fact that the panel accepted the Appellee's version of events does not indicate bias or corruption among the arbitrators.

The Appellant further contends that the panel was corrupt and bias because it stated that the Appellant only identified three failures of the Appellee when the Appellant argued he should be excused from paying the fee. The Appellant claims that he argued numerous other issues to the panel, reiterating that the Appellee perjured himself numerous times and that the Appellee intentionally lied to the Appellant during the course of his representation. Again, the fact that the panel chose to reject the Appellant's arguments is not evidence of bias or corruption. The panel expressly stated that it could not find evidence to support the Appellant's arguments during the arbitration. While the court again acknowledges that the Appellant believes he met this burden, it is without authority to reassess the panel's factual determination and does not find evident bias among the arbitrators in choosing to exclude some of the Appellant's arguments in its decision.

The Appellant offers other argument regarding evidence of bias and corruption among the arbitrators, but it is again repetitive of what has already been stated. Pursuant to AS 09.43.120(a), a court may only vacate the panel's award if: (1) the award was procured by fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being

shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection. This court cannot find that the Appellant has met his burden in proving evident partiality or corruption among the arbitrators. While the court acknowledges that the Appellant believes he presented sufficient evidence to support a different award, this court cannot reassess the facts presented to the panel. The court can only look to see if there was evident partiality and corruption among the arbitrators. Upon reviewing the record, the court is unable to make this determination and finds that the panel acted within their powers when making the award. Even if the Appellant presented a magnitude of evidence to the panel that supported his claim, this would not be enough for the court to vacate the award. This court is without authority to vacate an award due to "fraud or other undue means" even if the panel made gross errors in their decision.[6] The only argument the Appellant offers repeatedly to prove his contention of fraud, evident partiality, and corruption among the arbitrators is that the panel issued a decision in favor of the Appellee despite of what he claims is "overwhelming" evidence in support of his position. This is not evidence of "evident" partiality. For the court to find bias among the arbitrators on this basis would require the court to inquire into the merits of the panel's decision. As stated multiple times, this court is without authority to do

---

[6] Alaska State Housing Authority v. Riley Pleas. Inc., 586 P.2d 1244, 1247 (Alaska 1978),

so. Therefore, the court must defer to the panel and upholds the panel's decision to award the Appellee his fees.

Finally, the Appellant contends that the panel exceeded its powers by awarding the Appellee funds that he never requested. He further argues that the arbitration panel awarded the Appellee a $1,000.00 more than the Appellee was owed. The Appellant suggests that this also demonstrated corruption on the part of the arbitrators, as the Appellee had never requested these fees.

The court disagrees that the panel exceeded its power to make this award. When the Appellant pursued fee arbitration, his fee agreement with the Appellee became a proper matter for consideration. The fact that the Appellee had elected not to pursue the Appellant for the remainder of his undue balance prior to the Appellant's commencement of this action did not constitute a waiver that would prevent the panel from considering this issue. At the panel, the arbitrators were presented with the parties' fee agreement. The Appellant did not dispute that he entered into a fee agreement for $200 per hour with the Appellee. The Appellant did not dispute the time sheets presented by the Appellee that demonstrated the time spent by the Appellee working on the Appellant's case. The Appellant only challenged a charge reflecting air travel to McGrath, and the Appellee agreed that this was an improper charge. The Appellant acknowledged that he had not paid the remainder left owing on the parties' fee agreement, which reflected an amount of $2,059.19. The Appellant only challenged the quality of the Appellee's services. The panel concluded that the Appellee had effectively represented the Appellant and awarded the Appellee the amount left owing on the parties' fee agreement.

The Appellant made his fee agreement with the Appellee a proper issue for consideration when he decided to pursue fee arbitration and cannot argue waiver now. Therefore, pursuant to AS 09.43.120(a)(3), the court does not find that the panel exceeded their powers and will not vacate the award. However, pursuant to AS 09.43.130(a)(1), the court does find that the award should be modified due to an evident miscalculation on the part of the arbitrators, The panel's decision acknowledges that the Appellant had paid $11,329,81 to the Appellee for his services. The panel also acknowledges that the Appellee had charged the Appellant $13,389.00 for his services. The difference between these two amounts equal $2,059,19. The panel further credited the Appellant $370.00 for the Appellee's travel expenses. Therefore, the correct amount that should be awarded is $1,689.19. However, the court finds that this miscalculation in the panel's award was due to clerical error, and is not evidence of corruption or bias among the arbitrators.

DATED in Kenai, Alaska, this 15th day of June, 2007.

"s/"
HAROLD M. BROWN
Superior Court Judge

## APPENDIX C

**August 26, 2006** - Before the Alaska Bar Association Fee Review Committee, Third Judicial District, David S. Haeg vs. Brent R. Cole, File No. 2006F007, Decision and Award:

"On March 29, 2994, [date as written in original] David Haeg learned that he was the subject of a criminal investigation when a search warrant was sewed on a hunting lodge that he owned. It developed that the Alaska State Troopers were investigating him for taking wolves "same day airborne" outside an area where aerial wolf control activities were permitted.

Mr. Haeg hired attorney Brent Cole to represent him. He signed a written fee agreement on April 10, 2004 that included the customary stipulation that the attorney could not guarantee any particular outcome for the client. The agreement provided that Mr. Cole would bill for legal services at the rate of $200 per hour. Mr. Cole undertook the representation and sent Mr. Haeg detailed billing statements on April 2 1, June 1, June 29, July 26, August 30, October 7, October 29, November 8, November 30, 2004 and January 31, 2005. Mr. Cole charged a total of $13,389.00 and Mr. Haeg paid $11,329.81.

Mr. Haeg does not dispute the reasonableness of the hourly rate set by Brent Cole or the amount of time charged for legal services. Rather, Mr. Haeg's complaint is that Mr. Cole's services to him had so little value that he should be excused from paying a fee.

Mr. Haeg has identified three specific failures: 1) Mr. Cole should have filed a motion to suppress the evidence seized pursuant to the search warrants because the affidavit submitted to the court in support of the search warrant application was perjured; 2) Mr. Cole gave him poor advice when he recommended that Mr. Haeg give a

statement to the Alaska State Troopers without first having reached a binding plea agreement; and 3) Mr. Cole should have moved for specific performance of a plea agreement when the prosecutor unilaterally changed its terms.

Mr. Haeg did not offer evidence of the points on which the search warrant application was defective. He argued that the affidavit contained a false statement about the location of the taking of the wolves, although the taking would have been unlawful even in a correctly identified location. We are therefore unable to reach a conclusion that the affidavit was false in whole or in part or that the misstatement was material. It follows that the panel cannot decide whether a motion to suppress should have been filed or was likely to have been granted.

Mr. Cole testified that it was his opinion, from the earliest stage of the case, that the best case strategy for Mr. Haeg was "damage control". His reasoning was that there was sufficient evidence to support a conviction on one or more counts, and a defense at trial would be unavailing. It followed that steps should be taken to get the best possible plea agreement. Mr. Cole believed that early cooperation with the authorities would lay the groundwork for a successful negotiation, and, based upon Mr. Cole's advice, Mr. Haeg did volunteer a statement about the offenses to the troopers.

The prosecutor sent Mr. Cole a proposal for a plea and sentencing agreement on August 18, 2004. In the ensuing weeks, the prosecutor and Mr. Cole negotiated adjustments in some of its terms. By October, a plea agreement had been fumed up. Central to Mr. Haeg's concern was the suspension of his hunting guide license which, the agreement provided, would be for one to three years, the exact term to be set by the court at sentencing. All other terms of the sentence were fixed, including the forfeiture of a PA-12 aircraft. The prosecutor proposed to

argue that the license suspension should be at the high end of the agreed-upon range because he had evidence that Mr. Haeg had participated in hunting or guiding violations in connection with a moose hunt the previous year; the defense had prepared evidence to refute the prosecutor's theory and anticipated as much as a day of testimony at the time of sentencing. If Mr. Haeg showed that he was not guilty of the moose violations, he would be in a better position to argue that the license suspension should be as short as one year. The entry of plea and imposition of sentence were set for November 9, 2004.

During the weeks that Mr. Cole was negotiating with the state, Mr. Haeg had second thoughts about the forfeiture of the aircraft, which he thought particularly suited to his work as a game guide. He had another plane that he could more easily give up, but the prosecutor had not agreed to allow a "swap". There had also been some discussion of Mr. Haeg's paying some amount of cash in lieu of forfeiture of the aircraft. Mr. Haeg conceived the idea that he could plead guilty to the charges and then allow the judge to decide the terms of the sentence, including jail time, fines, forfeitures, license revocation and the length and terms of probation. It was his hope to persuade the judge to return the plane to him.

Brent Cole vehemently opposed Mr. Haeg's "open sentencing idea. He was concerned about the application of A.S. 08.54.605, which effectively requires a five-year suspension of a guide license when a guide is sentenced to more than five days or more than $1000 on a hunting violation. He thought it likely that a judge would exceed the five-day or $1000 threshold at open sentencing with the result that Mr. Haeg would lose his license for a full five years and ultimately bankrupt his lodge and guiding businesses. He also doubted that a judge would allow Mr. Haeg to keep the plane used in the commission of the offenses. However, at Mr. Haeg's insistence, Mr. Cole one

day asked the prosecutor whether the prosecutor would object to Mr. Haeg's pleading guilty to the charges under discussion and "going open sentencing" (having the judge select all the terms of the sentence) and the prosecutor indicated he would have no objection.

Mr. Haeg and his witnesses appear to have believed that Mr. Haeg was proceeding with some version of an "open sentencing" option on November 9. Mr. Cole testified that he was prepared to go forward with the negotiated plea agreement on that day, which left to the judge's discretion only the length of the license suspension within a one- to three-year range.

Mr. Cole testified that, a few days before the hearing, the prosecutor advised counsel that he was filing an amended information to include a charge that carried a mandatory three year license suspension. He notified Mr. Haeg of the change on November 8. In a recorded telephone call on January 9, 2005 [Exhibit 19, page 6], Mr. Cole recalled the prosecutor's change of heart somewhat differently. On that date he said that the prosecutor had threatened to amend the charges to include one that required a minimum three-year license suspension unless Mr. Haeg agreed to the forfeiture of the PA-12 aircraft. In any event, the news of a change in the terms of the plea agreement threw the defense team into disarray. Mr. Cole asked the prosecutor to reconsider and, in the evening hours of November 8, they eventually reached a new agreement that included all the terms of the plea agreement previously reached with the change that the license suspension would be retroactive to May 2005 and would end June 30, 2006. The form of the license suspension term was to be 36 months with 20 months suspended The parties proposed to do just an arraignment on November 9 and then to seek approval of the agreement from the Division of Occupational Licensing before formally entering the plea The new deal left nothing to the court's

discretion, obviating the need for a contested evidentiary hearing on the moose case.

Mr. Cole, Mr. Haeg, and Mr. Haeg's witnesses went out to dinner together after the re-negotiated deal was made with the prosecutor to celebrate the disposition of the *case.* The next day, Mr. Haeg was arraigned on the charges.

Mr. Haeg, however, had apparently not given up on the idea of open sentencing. He did not consummate the plea agreement. He eventually discharged Mr. Cole and hired other counsel. With his new attorney, Mr. Haeg went to trial and was convicted. The judge suspended his guiding license for five years and forfeited the PA-12 aircraft. The judge that ultimately imposed sentence was the same judge that would have sentenced Mr. Haeg, had he pleaded guilty pursuant to a plea agreement.

Mr. Haeg has not proved that Mr. Cole's services were valueless to him. Neither party offered expert testimony regarding the quality of Mr. Cole's efforts, but the panel can draw from the evidence two measures of the merits of Mr. Cole's services to Mr. Haeg. The first has to do with Mr. Cole's advice to Mr. Haeg that he should not leave the terms of the sentence to the discretion of Judge Murphy. The plea agreement that Mr. Cole presented to Mr. Haeg on November 8 was plainly more favorable to Mr. Haeg than "open sentencing" turned out to be, so it appears, with the benefit of hindsight, that Mr. Cole's advice that Mr. Haeg should accept a plea agreement was sound.

Mr. Haeg argues that Mr. Cole should have moved to suppress the evidence taken pursuant to the search warrants and should have moved for specific performance of an "open sentencing" agreement. But no evidence was presented that Mr. Haeg's second lawyer filed such motions. Comparison of the steps taken by another attorney, while not proving the quality of Mr. Cole's counsel, goes a way toward showing that a competent

attorney would not necessarily have filed these motions. And, again, if Mr. Cole or another attorney had been successful in enforcing an agreement to "open sentencing", it is likely that Mr. Haeg would have gotten the same very severe sentence that was eventually imposed.

The has been presented no other evidence to support a finding that Mr. Cole's representation of Mr. Haeg was so deficient that no fee is due.

AWARD

Mr. Cole conceded at the hearing that Mr. Haeg was mistakenly charged $370 as reimbursement for a plane fare. The panel therefore finds, based on this admission, that the total fee charged Mr. Haeg should be reduced by $370.

In other respects, the panel finds in favor of the respondent, Brent Cole. Petitioner shall pay the balance of the fee, or $2689.19.

NO REFERRAL TO DISCIPLINE COUNSEL

The panel finds no basis for a referral to discipline counsel.

"s/"
Nancy Shaw, Panel Chair
August 12, 2006

"s/"
Robyn Johnson
August 25, 2006

"s/"
Yale Metzger
August 25, 2006

## APPENDIX D

**February 23, 2009** - In the Supreme Court of the State of Alaska, David S. Haeg v. Brent R. Cole, Amended Order/Petition for Rehearing, No. S-12771, dated 2/23/09:

Before: Fabe, Chief Justice, and Matthews, Eastaugh, Carpeneti, and Winfree, Justices.

On consideration of the Petition for Rehearing filed on 2/6/2009,

IT IS ORDERED:

The Petition for Rehearing is DENIED.

Clerk of the Appellate Courts

"s/"
Marilyn May

Cc: Supreme Court Justices
Judge Brown
Trial Court Clerk / Kenai
Publishers for Opinions (Opinion #6334, 1/30/2009)

Distribution:

David Haeg
PO Box 123
Soldotna AK 99669

Brent Cole
821 N Street Ste 208
Anchorage AK 99501

## APPENDIX E

### Dave Haeg's Wolf Statement

Your Honor – members of the court I appreciate your being here and apologize in advance for taking up so much of your time.

The issues we are here to resolve are of an importance to me eclipsed only by that of my wife and daughters. I sincerely hope you listen very carefully and take notes from which to question myself, my wife, my friends, and anyone else involved.

First, I would like to make is absolutely clear that I realize I made a horrendous mistake that will probably haunt me and my family for the rest of my life. I have regretted my actions every minute of every day of every month since. If you doubt this I suggest talking to my wife and kids.

I have not slept a whole night in 6 months, have been diagnosed with severe depression and feel I am a total outcast, staying in my home unless forced to do otherwise. I cannot express just how sorry I am and feel I have let the State and the people who depend on its resources down by jeopardizing a desperately needed program to reduce predation, before there is absolutely nothing left.

Although I am guilty of most of the charges I face I did experience circumstances which could have clouded anyone's judgment and caused them to act the same way.

I grew up with just my parents in a very remote area of Alaska where there are no roads and the nearest family lived 35 miles away. All my schooling was by

correspondence from which I graduated with honors at our lodge in 1984. I learned very early on the irreplaceable value of our fish and wildlife resources – as a vital source of our winter food, as watchable wildlife for our lodge guests, and as an income from our fishing and trapping.

My love and skill with wildlife led me to become an assistant big game guide in 1984 at the age of 18, under Master Guide John Swiss. I passed the registered guide test in 1992 and became a Master Guide just recently at the age of 38. I purchased Eberhard Brunner's guide operation in 1997 after working for him for many years. After purchasing Mr. Brunner's business my wife Jackie and I devoted all of our time and money to it – building a beautiful lodge, putting in electricity and indoor plumbing, rebuilding almost all of the out buildings, and establishing the way of life we loved and hoped to pass on to our children.

During the same time we were getting into the guiding business wolf numbers started to increase dramatically. At first I thought all the old time guides were blowing the wolf problem way out of proportion and I was actually thrilled to see more wolves. By the winter of 1992 even I had the feeling they may be right – when I followed one pack of 46 wolves that averaged 2 moose kills per day. Moose and resident caribou numbers started to drop and after several years I started to see more bull moose kill sites than I saw live bull moose. The wolf predation levels at this time were horrific.

One of my strongest beliefs is that to be an Alaskan Guide you must be first and foremost a good steward of the resource, willing to adjust hunting pressure to game numbers, willing to conduct yearly surveys, willing to pass that information on to the area biologists, Board of Game,

Legislature, Governor, media, etc. And be willing to aid ADF&G in their efforts to maintain healthy wildlife numbers through the State Constitutions sustained yield principle – essentially to be willing to leave the resource to future generations in as good or better shape than at present.

To this end we started decreasing moose and caribou hunts while trying to increase pressure on wolves. In 2003 we took less than 1/3 of our former moose hunts with caribou hunts essentially eliminated.

I also began attending and testifying at all Board of Game meetings dealing with my area along with submitting proposals, writing compass pieces to the Anchorage Daily News, calls and letters to Native communities, the Governor and all legislators, and talking extensively with every wolf biologist in the State of Alaska. I organized Alaska Western Wildlife Alliance, an association of mostly guides to better address the problem, traveled to Juneau to educate legislators, and have been a guest on live radio programs discussing wolf predation. I also attended and became a member of the Kenai F&G Advisory Committee.

As conditions grew worse with not much being done I learned how to trap and snare wolves and devoted as much time as I could to this effort. This seemed to have promise when I was able to catch over a dozen wolves in one winter. Yet success at this started to drop as each wolf pack learned to avoid my traps and snares.

When ADF&G solicited applications, last fall, for people and planes to conduct aerial wolf control in Unit 19D I felt as if those of us who had been fighting so hard for so long were finally getting somewhere. I later applied for

a permit but didn't get a response for several months. In February ADF&G called me in Pennsylvania to see if I was still willing to participate. ADF&G told me the 4 teams who had hunted all winter had taken less than ¼ of the wolves specified and that there was a concern the program might be terminated if more wolves were not killed. I told ADF&G that I would be more than happy to help when I got back to Alaska and after I testified at the Board of Game meeting in Fairbanks. When these were done I purchased a very expensive shotgun and ammo, which had been recommended, and we set out to McGrath, determined to kill wolves so the program would not be a failure and terminated.

On our way to McGrath from Soldotna we found virtually no moose, no caribou, no wolves, and hardly any tracks. As we were landing in McGrath there were more moose along the river beside the runway than we had seen during the entire trip. It was truly stunning to us that the wolf predation problem was so bad that the only moose left had gathered within a ½ mile of town for protection from the wolves. It should have dawned on us at this time why the first 4 aerial wolf control teams had been unable to take even ¼ of the 40 wolves specified in the previous 4 months. I now realize that there were not enough moose and caribou left in the control area to support the number of wolves ADF&G wanted to take. It probably would not have mattered how many aerial wolf teams were permitted by ADF&G – just about all of the wolves that used to live in the control area had to move to other areas that still had game. What ADF&G did by issuing more permits was just adding to the number of pilots frustrated by not being able to find wolves inside the area. After we left McGrath we couldn't find anything again for hours. We finally did find a fresh moose kill close to the Southern boundary and started trailing the wolves. We caught up to them after a

couple miles and didn't think about anything but trying to get them before they got off the river and into the trees. We managed to get one wolf out of the 3 we had seen. From the tracks I would say 5 others went into the trees before we seen them. When we stopped to figure out where we were we realized we were likely outside the area by a little over 1 mile which is about 45 seconds flying time. They next day we continued trying to locate wolves inside the area with no success. We later found another moose kill further outside the area up Big River with 2 of the wolves out in the open. We went after those wolves and got them as they tried to get to the timber. At the time we thought we were doing the right thing, as the wolves we killed were undoubtedly the ones that had finished off the moose that once lived in the control area. I guess to us it was clear the wolves Fish and Game wanted killed were no longer in the control area and that if these wolves that were now outside the open area were not killed they would finish off the last of the moose surrounding the control area – which would be needed to repopulate the control area which was already devoid of moose.

The more we flew the more I realized we were and are at the very last hour in being able to do anything about reversing the plummeting and dangerously low moose and caribou numbers. Of the 5000 resident caribou that used to winter from Lime Village to Rainy Pass we spotted exactly 0. How many years will it be to bring this herd back? Say we get a very healthy 15% increase per year? 0 caribou x 15% = 0 caribou. Of the over 500 moose that used to winter on the Swift River up stream of Lime Village there are now 40 left. How many years will it take to bring this herd back? What if the 12 wolves that had killed one moose out of this 40 and were after another within 3 days had been left alone? Remember each wolf consumes an average of 1 moose a month. This means every 3rd day this pack will kill

a moose, which is exactly what we observed. How long will the 40 moose last this pack? About 120 days or 4 months and it will likely be gone as wolves generally stay with a good food source till it's gone. How long will it take to replace this herd if it is 0? How many years does biologist Toby Bodro think it will take for moose numbers to recover to a point to support the harvest hoped for or needed by Alaskans? Does he think control should have started sooner? These are the grim realities that face all of us who depend on the wildlife of this area.

In the 50 plus hours we flew in Unit 19 during the control program we saw a total of 8 wolf-killed moose, 27 wolves and 110 live moose. This is an absolutely unbelievable ratio of about 1 wolf to 4 moose. State biologists have determined a healthy ratio to be 1 wolf to 40 moose and when ratios get down to 1 to 20 the moose are in trouble. What kind of trouble are moose in when they are just about gone and there is 1 wolf to every 4 moose? 8 wolf killed moose and 110 live moose in 2 weeks flying indicates a mortality of at the very least of 7% per month or 84% per year. Calf survival in this area is under 7% per year. This means in 15 months there will be very few if any moose left. Is it time to hit the panic button?

During the time we were out looking for wolves we flew over 5000 air miles, which covered about 5000 square miles of the best moose habitat we could find. It is easy to see ½ mile out each side of the airplane while traveling giving 1-mile wide coverage. We did this, as good moose habitat is also good wolf habitat. Since we saw 110 moose in 5000 square miles we come to a density of .022 moose per square mile. I realize we did not cross section all these square miles to find every moose. But we did put 5000 air miles over just the best winter habitat – along rivers and just above tree line on the hills. Since we just covered the

highest density areas I feel this figure to likely average out if the lower density areas were figured in.

A moose density of .022 per square mile is absolutely unheard of. Nothing has ever been recorded this low where moose occur. Several years ago before things really got bad even official surveys came up with the lowest moose densities ever recorded – in an area which 15 years ago had one of the highest and one in which the habitat continues to be extremely healthy.

Moose densities in these areas used to average well over 1 per square mile or over 45 times what we recorded last winter. If this is not a biological emergency I don't know what is.

The original area opened around McGrath was later expanded to include the area in which it was thought the wolves would range into. This was figured to be another 20 miles or so. Yet every pack, which kills all the game in its territory, will just keep traveling until it finds food. An example of this is a pack of 24 wolves I followed from Two Lakes on the Stony River through Merrill Pass and then down to the Drift River. This is over 100 miles on the ground and over 75 miles straight line. I quit following them as I was getting low on fuel so God only knows how far they went from Two Lakes that is devoid of any moose. I guess my point is that if you try to conduct wolf control where the game is already gone the wolves that ate everything will be gone also – hunger overpowers any desire to stay in their territorial range.

Probably because of this a current Board of Game member at the February meeting told me that if we ended up shooting wolves outside the open area to just report them taken inside the area. When talking about the

control program Toby Bodro stated "what is being done and what should be done are two different things". He also said the BOG was planning on expanding the wolf control program to include all of Unit 19. Meaning there was a problem everywhere – not just in the control area. A former State biologist said he couldn't believe people were not poisoning the wolves out there and went on to explain exactly the poison that works best and how to obtain it. I told him I thought poison was outlawed because it killed wolverine, fox, lynx, eagles, and ravens also. Several other Board of Game members along with high level ADF&G personnel and many others testifying at the February BOG meeting all had the same comment to me: It is much more important for a pilot as good as you to be out killing wolves then to be here testifying at this meeting. A Board of Game member also suggested I contact Lucky Egress in McGrath, who had one of the four original aerial control permits, to work with him to find wolves. I contacted Mr. Egress, before heading to McGrath, and he said his airplane engine was broken and that there were few if any wolves inside the open area. When you hear comments like this from our leading wildlife managers and experts you get the feeling of just how overwhelmingly important it is to reduce wolf numbers immediately.

Several ADF&G people at the BOG meeting again made the comment that there was a big concern that since so few wolves had been taken in the previous 4 months the program would be seen as a failure and terminated.

I don't know if I was exactly brainwashed at this point but I was feeling immense pressure from all sides to kill wolves. Conditions to find and track them would disappear as the snow started to melt and my spring bear hunting season was also getting close – which added to the pressure to do something effective soon.

The State prosecution will probably portray me as a renegade outlaw guide with little or no respect for the State, its laws, or its wildlife. They will probably say I did this to make money by selling the wolves or by selling more moose hunts. My response is if someone doesn't do something soon there will be no moose, no caribou and no wolves left to hunt. I have heard the troopers feel that I should never be allowed to guide again. Is this because I'm such a bad guide or that they feel enormous political pressure to punish me severely? I have been told that even the governor was contacted over my actions. Why should I and especially my family be signaled out for severe punishment when I was just trying to help? I even assisted the troopers in every way possible during their investigation. Does this action also call for the harshest punishment? I hope you realize just how much I love and respect this State and its wildlife and exactly how much pressure I was under when I broke the law. The only violations I have ever had in my whole life are two speeding tickets – even though my entire life has revolved exclusively around hunting, fishing, and trapping. Is this the past conduct and record of someone who is a renegade, does not respect the resource should not be shown any mercy and not given one chance to learn from his mistake?

The only license required for the issuance of the aerial control permit was a trapping license and in fact only my trapping license number was written on the permit. Firearms are a legal method of taking furbearers under a trapping license and wolves are classified as furbearers. At the same time we were taking wolves by shooting we were setting snares and traps. At no point during the wolf control program did we do any hunting or guiding whatsoever. Yet the State prosecutors maintain we were hunting and wish to suspend both my personal hunting and guiding privileges along with probation of 10 years of no

jailable offenses and no fish or wildlife or guiding offenses. In other words if I snagged a red salmon in the Kenai River, which is done continuously by accident, I would lose my guide license and the only way I have to provide for my family? Doesn't this seem excessive? Why don't they add in speeding & parking tickets? If the troopers and the governor feel I must pay dearly let me pay the price and not my family. Put me in jail – don't cripple the only way I have to provide for my family.

The Prosecution has said it is trying to keep emotion and feelings out of this to a big point because of what it is. What is it to the Prosecution? A very controversial and political issue very much in the publics' eye? How can I keep emotion and feeling out of this when my whole life is wrapped up in it? Am I not supposed to fight for my family just because the governor and prosecution would probably like it if I just dried up and blew away?

*(Let Brent argue the penalties and technicalities?)*

As far as what we did wrong trapping I was planning on flying out and pull the snares just as soon as everything settled down after getting our bear hunters out into the field. Before this happened my home was searched and my airplane seized. This was so devastating and stunning I didn't sleep at all for over a week and with spring hunters coming I was mentally a very big wreck. I relied on my wife and employees to make pretty much every decision from then on. That I had leg-hold traps out along with the snares at the wolf set was overlooked and I accept responsibility for these.

In early April a guide friend of mine, named Tony Lee, called and left a message that he had found a wolf set

on the Swift and wanted to know if it was mine. On April 4th I returned his call and confirmed it was mine. He wanted to know if I needed help with it. I said yes and that I was in big trouble with the State along with trying to somehow get through my spring season. I said that the last thing I wanted to do was make the 300-mile round trip flight through the Alaska Range just to shut the set down. I told him to set off all the traps and snares if he would. Tony Lee replied he would do that but since the set was still catching wolves he would really like to keep it going and that a bear-hunting client of his wanted a wolf or two out of it. I told him he could do whatever he wanted.

On April 11 I was so worried that the set may get me into more trouble that I called Tony Lee and told him I didn't want to worry about the set and to shut it down no matter what. Tony Lee said he would do that and that he would send me $1000.00 when he sold the wolves and wolverine he had gotten out of the set.

My wife at some point here also talked to Tony Lee about all this. As a result I don't know what to say about the trapping charges except I counted on Tony Lee to do as he said and that he wanted to take over maintenance of the set because it was still catching wolves.

To date I have yet to hear again from Tony Lee and he is avoiding my attorney. We have not received any money from the furs as he promised either. If you would like confirmation of any of this my wife can help you. We also have phone records showing when I called Tony Lee.

As I indicated before this has literally crushed my life and to a large extent the life of my family. For over a week I didn't sleep at all and after that only with medical help. Both my wife and I quit eating and each lost 20 lbs.

before we could force ourselves to eat. During the first couple months I would get severe anxiety attacks that at night forced me to hide under my desk and during the day led to dry heaving, uncontrolled sweating and shaking. I developed severe back pain from remaining bent over virtually day and night and to this day have non-stop headaches. I rack my brain non-stop while I'm awake to figure out where I went wrong. I still refuse to go outside unless forced.

I have made 4 half-hearted attempts at suicide – 3 while flying and once while helping Jake get a wounded bear out of his den.

My wife, Jackie, finally convinced me to not take my own life because she said she couldn't bear raising our daughters without me. I guess to the extent possible my stunned brain has realized that by trying to protect the future of my family and of those that also depend on moose and caribou I had just thrown my families future away.

I guess at times I feel like the State of Alaska has let all of us down. I poured my heart and soul into my life's dream only to watch the State do absolutely nothing for many years to stop it from being slowly wiped out. In a way it's like slow agonizing torture. I look at how carefully the State sheppard's and guards the businesses of loggers, fishermen, miners, tourism operators, oil companies and all others. I see how the state spends millions promoting tourism and subsidizing commercial fisherman when they have a weak salmon return. Yet my business was literally fed to the wolves and there will be no compensation for my family or me when our business collapses. It's kind of a cruel joke to me that the very first line of the State Constitution declares "This Constitution is dedicated to the principals that all persons have a natural right to life,

liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry". I have been denied my right to enjoy the rewards of my industry.

I understand that I did something wrong and I understand I must be punished. I hope you understand that it was only after I received a permit for aerial shooting that I purchased the best shotgun and ammo money could buy and spent hours modifying my best plane to help ADF&G. This does not excuse what I have done but it shows there was absolutely no intent to do so until started down this path by the State. I did not do this with the thought I was hunting or guiding or making money. I did it because of all the people out there; I understand probably best the staggering impact wolf predation has had in recent years. In the many, many hours I have flown this area in winter I have seen virtually no sign of anyone else doing anything to control wolf numbers. The expense to operate in these areas is enormous. During the 50 hours of flying we did during the aerial control program alone we burned close to 500 gallons of fuel that costs me in excess of $6.00 per gallon.

After this springs season, which by the way I truthfully did not expect to live through, we cancelled all of our fall hunts. I took everything extremely seriously and would not risk letting hunters depend on me when I did not know what was going to happen. The cancelled fall hunts would have provided ¾'s of our total years income to Jackie and I. Yet we still had to pay the State thousands in land leases and permits for our lodge and hunting camps even though we did not use them this past season. We had to cancel all my summer flightseeing trips because the plane I used for this was seized. Our legal bills are growing and we lost not only my income for this past season but also my wife's. Neither of us have any other income.

Again I cannot even begin to explain how much I regret what we did. I have a very hard time thinking of anything else. I look at life and how short it really is and how in an instant I threw a very large part of mine away. How can my wife and daughters forgive me? How can my friends? How can anyone else whose future I jeopardized by threatening the only program that can save the moose and caribou resource? How will I put my daughters through college now that I may have to start over and learn a new trade?

If you can find it in your heart to give me a chance I promise to never, never let you or the State down again. Please let me have the chance for me to live out the rest of my dream of being able to provide for my family as an Alaskan Big Game Guide.

In Trooper Gibbens report he states that "based on his experience there is clear economic incentive for Haeg & Zellers to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients".

Since Mr. Gibbens is allowed to give an opinion based on his experience in his report I would like him to give an opinion based on his experience with some other issues. I would like to have him and state biologist Toby Bodro answer these questions:

1. If they think there has been a huge drop in moose and/or caribou numbers in Unit 19 in the last 15 years?

2. If there has been a huge increase in wolves in the last 15 years in this same area?

3. If there are large areas almost devoid of moose and/or caribou such as around McGrath and the Upper Stony River that previously had abundant populations?

4. That if wolves are not reduced Unit wide all of Unit 19 will likely join the other areas which are now virtually devoid of moose and/or caribou?

5. If Mr. Gibbens and Mr. Bodro would agree that if moose and/or caribou numbers get much lower it likely will not be viable to operate or keep a hunting lodge and camps on leased State land in any of Unit 19? If Mr. Gibbens, who has seen the lodge my family and I built, can understand the effort and money required to build it and the pain and stress involved in likely having to burn it down?

6. If Mr. Gibbens and Mr. Bodro think the State has maintained its wildlife on the sustained yield principle – as required by the Alaska State Constitution?

7. If Mr. Gibbens agrees with the numbers of moose, wolves, and kills we compiled while flying in and around the wolf control area – 110 live moose, 27 wolves, and 8 dead moose?

8. If Mr. Gibbens feels if that I had not received a permit if I would have still purchased a shotgun and went out and shot wolves from the air?

9. If Mr. Gibbens and Mr. Bodro feel what I did was needed even if it was illegal?

I don't really know how to explain or express what I know to be true of wildlife numbers and trends in Unit 19. It is what I believe most would call a biological emergency. Moose numbers have bottomed out to very close to zero in

the last couple years around McGrath and more recently in the Upper Stony River. The wolves responsible have moved to other areas with some moose left. Last winter was the last chance to keep moose numbers from hitting virtually zero around Lime Village in my opinion. In a very misguided way I felt I had to step in and keep this biological emergency from happening. There was a very overwhelming compulsion to do something. After so many years of watching moose and caribou decline so fast that to stand by and watch the very last of them to be eaten wasn't possible for me. I think in most emergency situations it is natural to react without thinking things through. Now that I know the consequences it would be very possible for me to stand by – I just won't go out there in the winter when the battle that is being lost is so obvious.

We assisted in the investigation in everyway possible including rushing a map with kill locations to Mr. Leaders ASAP at his request.

As an observation the Board of Game must also want wolves reduced Unit wide because for years now they allow anyone, even aliens, hunting or trapping to take an unlimited number of wolves anywhere in Unit 19. This regulation sounds effective has done just about nothing to increase the wolf harvest.

I never contemplated the consequences of what we did until after the fact. We flew out with the best of intentions and got carried away before we ever stopped to think how it could affect our lives. Being that I've never been in trouble before has probably added to my naivety. I now have had 7 months of round the clock mind crushing fear to examine in minute detail every last consequence of my actions. The amount of fear I have gone through has changed my life forever. This new fear has eclipsed all the

really big fears I had before including flying low over miles of open ocean on wheels, getting into instrument flight conditions in very bad weather while in the mountains, and prying a wounded brown bear out of his den. I now can do and have done all of these without the slightest hesitation.

In the end I guess I should not have cared or tried so hard to keep the resource from self-destructing. Yet how do you do that when the resource is almost as big a part of your life as your family? Just watch it run off the edge of a cliff? Or do you flight as hard as you possibly can as I have done? In a way I feel I was in the same exact situation when I was 15. My parents left me to watch our lodge for the very first time by myself. An 8-1/2' sow brown bear and her 2 very large cubs broke into our lodge at night and started eating our winter food supply. Our bear dog was no match for 3 bears at once and I tried shooting in the air, cracker shells, roman candles, and spot lights to make them leave, all to no avail. In the morning they were gone and I boarded up the wall they had went through with 2 layers of ¾" plywood. The next night they came back and broke through again. Again I was unable to make them leave. They even started charging me whenever I got close. The next day I boarded up the hole again and was shocked at how much food they had eaten and destroyed. I realized if this went on there wouldn't be anything left for my parents and I to eat that winter. The next night I shot one cub in the dark at 10' away as it charged and shot both the sow and other cub inside the lodge the following night. At the time I only knew this was the right thing to do and didn't consider if it was legal. One main difference in this situation as compared to the wolf/moose situation is that our winter food could be replaced in one day; the moose may not be able to be replaced for decades.

If you ask everyone that lives or spends time in Unit 19 I know virtually all would agree the right thing to do is to reduce wolf numbers rapidly and that it is long overdue and possibly too late. But just because something is right does not make it legal however. No matter how important I feel it to be to save viable caribou and moose populations it is wrong to take the law into my own hands. I ask you to again look carefully at my intentions, at the State Constitutions mandate to the Department of Fish and Game, at my lack of any prior offenses except 2 speeding tickets, at the Board of Games intention of expanding aerial wolf control to include the area where we took wolves, at the likelihood of me ever doing anything to jeopardize my families future again, at the circumstances involved, at the extent to which my actions harmed the public, at how much Jackie and I have suffered already physically and emotionally, at how much we both have suffered already financially, at what motivated me, at the fact there are absolutely no limits on the number of wolves anyone, including non-resident aliens, can take either hunting or trapping, at the local peoples feelings toward unregulated wolf numbers, at the fact that I have been steadily decreasing the number of hunts we conduct in Unit 19 to the point we may no longer be able to pay the land lease our lodge sits on, the fact that every State biologist I have talked to agree unchecked wolf numbers will continue to drive the moose population down, that I have exhausted every option possible to control wolf numbers legally, that I embarked on the wolf control program legally, that I felt under pressure to make the program a success, that the program ultimately ended up taking less than ½ the wolves specified, that my observations led me to believe wolves had eliminated all the caribou in one individual herd and would virtually eliminate all remaining moose within a large radius around Lime Village before the next winters program, that I was told by a current Board of Game

member that if we shot wolves outside the area to just report that they were taken inside the area, that I was encouraged to poison wolves by a former State biologist, that several current Board of Game members told me it was much more important to kill wolves than to testify at the Board of Game , that you read carefully each and every letter sent in my behalf, that we assisted the troopers in every way possible in their investigation, that we were told by ADF&G that if more wolves weren't taken the program may be cancelled, why were we the only team added to the original 4 teams that took less than ¼ of the wolves wanted in the first 4 months of a 6 month program? Wouldn't you add 30 teams to the program instead of one? They were averaging ½ of a wolf per team per month. If they needed 30 more wolves taken in 2 months they would need to add 30 teams, that every wolf we killed was near a freshly killed moose, that I gave my very best to the State to help with the control program – my best airplane that is the backbone of my ability to provide for my family, the best shotgun money could buy, the best ammo and my best intentions, that you request of Trooper Gibbens his personal feelings and thoughts of my intentions and why we did what we did and how we got to where we could do something illegal like this, that I have come very close to committing suicide over this, that I have been denied my right to the enjoyment of the rewards of my own industry as guaranteed by the State Constitution, that I accept responsibility for breaking the law, that I have voluntarily given up guiding since May 26, 2004, that I had told Tony Lee not once but twice to close my snare set down and he agreed both times, that you look very closely at what happened to my southern guide neighbor Jim Harrower and tell me that the strain of watching everything you have being wiped out might cause people to do something they would never consider otherwise.

My attorney has counseled me many times against bringing to attention the fact that I am a big game guide and that I make my living by killing moose and caribou among other animals. He says people invariably receive harsher penalties when it is brought out they are big game guides acting out of greed and they did something illegal just to make more money at the expense of a public resource. It is also of great concern that we take a very valuable and much depended upon source of food from the residents of Alaska and give it to rich people who don't live in Alaska and may not even live in the United States.

First I would like to point out that less that 1% of all the meat produced by our business leaves the State. A large portion of meat is given to Alaskan residents who are unable or too old to hunt anymore and the rest is divided between my family, my guides and others who would kill their own moose if moose meat weren't given to them. I figured out the difference between a moose killed by one of my clients and a moose killed by one of my guides. Both moose would be eaten by my guide but the one killed by a client would also help employ at the very minimum 8 Alaskan residents with the approximately $15000.00 he will leave in the State.

More importantly if someone was only interested in money and didn't care about the resource wouldn't you think they would have charged a rich hunter $5000 to shoot just one wolf from the air? Wouldn't it be even better to charge $20000 to shoot a 70" moose from the air when there was no snow on the ground to record you did something illegal? What about $30000 for a guaranteed 10' brown bear that also represents a fraction of the risk of killing wolves in the snow?

What we did does indeed benefit my guide business along with subsistence users and especially those who will come to depend on moose and caribou in the future. It may preserve a resource that my business, lodge, cabins, camps and land leases must have to survive. If the moose resource goes much lower than what exists at this moment in time I will be forced to give up or burn our lodge, cabins, camps, and leases - as Mr. Harrower has had to do. This may not seem a big sacrifice to some but to me who grew up in the wilderness it is a very beloved and integral part of my life's dream that I hoped my kids would be able to continue.

If I was looking to just make money with no regard to the resource would I have spent the many thousands of dollars and untold hours educating the legislators in Juneau, the BOG all over the State, the Governor, started Alaska's Western Wildlife Alliance, became a member of Kenai Fish & Game Advisory Committee, and sent out literally thousands of letters explaining what was happening to the moose and caribou of Unit 19 from wolf predation?

If I wanted to just make money why did I fly for over 30 hours inside the open wolf control area looking in vain for wolves when it costs me at least $100 per hour to operate my plane out there?

Again I urge you to remember Jim Harrower who was my neighbor to the south and east if you think I am not serious when I tell you we are hanging on by a thread. This year Mr. Harrower was forced to give up his beautiful lodge, cabins, camps, and leases on the Stony River which represented 27 years of hard work and an investment that is incalculable. This was a catastrophic blow to Mr. Harrower.

*(Read Harrower's letters to Knowles at this time)*

As Mr. Harrower indicated in his letters to then Governor Knowles many subsistence users and guides have considered suing the State for mismanagement of wildlife resources in violation of the State Constitution.

I received a phone call on November 1, 2004 from a board member of the Alaska Professional Hunters Association. Due to the increasing numbers of guides in western Alaska that have lost and will lose their guide businesses and lodges APHA is starting action to file suit against the State of Alaska. I will be included in this action as I am one of the many APHA members that are losing his lodge and business.

In closing I hope you realize just how grim the situation really is and the hardship and strain endured by both guides and subsistent users alike for the past 10 years. Also that both Jackie & I voluntarily gave up our fall guide season, which represents ¾ of our combined yearly income. This is a very steep price to pay – especially for a family raising 2 kids. I did not do this for any monetary gain – I did it to protect the future of a resource I hope everyone, including my kids, will one day be able to depend upon again. I tried every legal available means to do this until it became such a biological emergency I lost my perspective. As everyone who has tried to cheer me up in the past 8 months has said – I'm only human and humans make mistakes.

When it comes time to sentence Tony Zellers you must remember it was my idea to get the aerial wolf control permit, that I was the one deciding where we should fly, that in most instances I am the employer and Tony the employee, and that I was constantly making observations

at the unbelievable low numbers of moose and caribou where 10 years ago there were thousands - pretty much telling him all the reason I felt why it was so vitally important to reduce wolf numbers before they finished off any remaining moose and caribou.

I give you my word I will never knowingly break another game law for the rest of my life. ***Read letters of support now***

"s/" Dave Haeg

## APPENDIX F

## AFFIDAVIT FOR SEARCH WARRANT'S

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. For many years it has been illegal to shoot wolves from an airplane. As part of an experimental predator control program in a small area around McGrath, it was made legal to aerial hunt wolves by a select number of permitted hunters as long as they remained within the permit hunt boundaries and adhered to strict reporting requirements and permit conditions. The only legal methods of take for wolves outside of the two permitted areas in the State are either ground shooting after three A.M. after the day a person has flown, or trapping and snaring. On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within the portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers' application form they stated that they would be operating from Trophy Lake Lodge, a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations, built, owned and operated by David Haeg. If not based at the

lodge, they planned on basing out of McGrath (which did not end up being the case). In addition they stated that they would be using a bush modified, high performance, PA-12 Supercruiser on Aero 3000 skis. David Haeg identified himself as a Master Guide on his application for the aerial wolf hunting permit with the Alaska Department of Fish and Game. (See attached application).

4. On 3-21-04 your affiant contacted Haeg and Zellers in McGrath and viewed their aircraft, N4011M, I specifically noted the style of skis and oversized tail wheel without a tail ski, which is a rather unusual set up in this area. Out of all the aircraft permitted to legally hunt wolves in the McGrath area, this was the only one set up with these skis in conjunction with this type of rather unique tail wheel. During our conversation Haeg commented on the performance of his skis, and the one-inch wide center skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot". As Zellers was describing the new shot, he pointed into the airplane and I observed a camouflaged colored shotgun near the rear seat. Zellers went on to describe how with the short shot gun and the type of doors on this airplane, he was able to shoot out both sides of the airplane without the airplane making a full circle turn. N4011M is registered to Bush Pilot, Inc., P.O. Box 123, Soldotna, Alaska 99669. This is the mailing address listed for David Haeg on his wolf permit application with the Alaska Department of Fish and Game.

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper swift river drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common

practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations. From my experience I recognized this as being consistent with wolves being taken from arid airplane. At all four locations airplane backs consistent with David Haeg's airplane were observed and the wolf carcasses had been removed.

7. Trophy Lake Lodge is located in Game Management Unit 19C, and is a large guide camp which Haeg owns and uses for both commercial and private use throughout the year. The lodge is located on the upper Swift River, 27 miles upstream of the kill sites, and 63 miles southeast of the nearest boundary of the legally permitted aerial wolf hunting area.

8. On 3-28-04. I returned to the kill sites and did a thorough ground investigation. At kill sites # 1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. Investigations at kill site #3 showed a vertical trajectory of the pellets, consistent with the shot being fired from an airplane. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". There were no human tracks, snowshoes, snowmachine, or

airplane ski tracks within 20 yards of the cartridge brass, consistent with it being fired from an airplane. Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. On 3/29/04, search warrant 4MC-04-001SW was issued by the Aniak District Court for Trophy Lake Lodge, and Aircraft N4011M. During the search warrant execution later that same day, the lodge was searched during which distinctive ammunition (".223 REM WOLF"), wolf carcasses, and hair and blood samples were seized. The carcasses had no obvious trap or snare marks, and appeared to have been shot. It was learned that Aircraft N4011M was in Soldotna (McGrath ADF&G spoke to Haeg at his home) at the time, and the search warrant return was submitted to the Aniak Court on 3/30/04.

10. During my time as a pilot in remote Alaska, it has been my experience that most pilots use a global position system (GPS) in conjunction with maps of the area when conducting bush flight operations. It is very common to save landing sites, lodge locations, and kill sites in the GPS, or to mark the locations on a map. Many of the hunters participating in hunts with specified boundaries, mark the boundaries on either the map or the GPS. Haeg provided GPS coordinates for the kill sites of the three wolves that he reportedly killed inside the legal permit hunt area. I flew to the coordinate which Haeg provided to ADF&G, and was unable to locate ski tracks or kill sites.

11. During the investigation it was brought to my attention by another Trooper that on the web site found on the internet at www.davehaeg.com David Haeg offers winter wolf hunting and trapping trips for $4,000.00. He goes on to state that in his advertisement that he will

guarantee that every hunter takes home a wolf or wolverine hide. On the web site there are photographs of what appear to be shot wolves in front of N4011M. Also in the photo is a man holding a Ruger mini-14 rifle, which is capable of firing .223 caliber cartridges. There are numerous other photographs on the site showing shot and snared wolves.

12. Less than one quarter mile from kill site #1, there is the carcass of a dead moose which the wolves have been feeding on. The moose carcass has snares set around it, as determined by two snared animals I observed near the carcass. The airplane tracks where the trapper landed and walked in to set the snares next to the moose carcass are the same type and vintage of those at the shot gun and rifle killed wolf sites. During the investigation there were no catch circles or drag marks typically found at sites where wolves have been trapped or snared. All four of the wolves were free roaming and left normal running wolf tracks up until the point they were shot.

13. At both the consolidation (a location between the kill sites where this same aircraft landed and took off several times) site and kill site #3, shoe tracks which appeared to be made from "bunny boots" were observed.

14. On 3/29/04, I executed a search warrant at the lodge, but the airplane was in Soldotna at the time. Soldotna Troopers have visually confirmed that the airplane is at the Haeg residence currently. The residence address listed by David Haeg on his wolf hunting permit is 32283 Lakefront Drive in Soldotna. On 3/30/04, Tony Zellers telephoned the McGrath ADF&G office and requested that a copy of the revised wolf permit conditions be faxed to David Haeg's residence. The reported kill date of the wolves by Haeg and Zellers was 3/6/04, and the wolf

hides would need to be either fleshed, stretched, and dried, or stored in a refrigerator or freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

Trooper B. Gibbens — "s/"
Title — Signature

Subscribed and sworn to or affirmed [telephonically] before me on March 31, 2004, at Aniak, Alaska.
(Seal)

"s/"
Magistrate Margaret Murphy

## APPENDIX G

**March 29, 2004**: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. 4MC-04-001SW.

Being duly sworn, I state that I have reason to believe that:

(X) on the person of David S. Haeg or Tony R. Zellers

(X) on the premises known as: Trophy Lake Lodge or 4011M at SE of McGrath, Alaska,

there is now being concealed property, namely:

Within the remote camp known as "Trophy Lake Lodge" located near Underhill Creek near the Upper Swift River in GMU-19C and on and within Aircraft N4011M, a Piper PA-12 Supercruiser, all .223 caliber rifles and shotguns and ammunition used or on hand as well as spent shell casings or shotgun hulls, any wolf carcasses, wolf hides or wolf parts, oil blood or hair samples located within or on N4011M, any video or still camera film or photos.

Which (see AS 12.35.020)

(X) 1. is evidence of the particular crime(s) of Take Game From Aircraft 5AAC92.085(8).
2. tends to show that Haeg and Zellers committed the particular crime(s) of Take Game from Aircraft 5AAC 92.085 (8).

And the facts tending to establish the foregoing grounds for issuance of a search warrant are as follows: SEE ATTACHED AFFIDAVIT.

**March 31, 2004**: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. 4MC-04-002SW.

To: Any Peace Officer

(X) Sworn testimony having been given by Trp. Alaska State Troopers.

(X) An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens – Alaska State Troopers

I find probable cause to believe that

(X) on the premises known as: 32283 Lakefront Drive to include Residence Hanger, Outbuildings, and Curtilage at Soldotna Alaska.

There is now being concealed property, namely: All .223 caliber rifles and 12 gauge shotguns and ammunition, as well as spent shell casings or shotgun hulls, also any navigational maps, equipment, and information contained within, any wolf carcasses, wolf hides or wolf parts, blood or hair samples which may be from a wolf, any video or still camera film, negatives, or photos which may show winter wolf hunting or trapping, as well as any digital still or video cameras and data contained within, any "bunny boots", and any wolf snares, any written records containing information pertaining to flight locations, dates, and passenger information from March 1st through present. Any record pertaining to the hunting or trapping of wolves. All taxidermy paperwork and transfer of possession papers for wolves from March 1st through present. Landing gear, ski's, tail wheels. Also satellite telephone.

(seal) 3/31/04 "s/"

Date Magistrate Margaret L. Murphy

**March 31, 2004**: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. 4MC-04-003SW.

To: Any Peace Officer

(X) Sworn testimony having been given by Trp. Alaska State Troopers.

(X) An affidavit having been sworn to before me by Trp. Trooper Brett Gibbens – Alaska State Troopers

I find probable cause to believe that

(X) on the premises known as: the State of Alaska, at Alaska, specifically search and seize the N4011M, Piper PA-12 Supercruiser aircraft wherever it may be located within the State of Alaska.

There is now being concealed property, namely: Airplane N4011 M, a Piper PA-12 Super Cruiser, as well as all .223 caliber rifles and 12 gauge shotgun and ammunition, as well as spent shell casings or shotgun hulls, also any navigational maps, equipment, and information contained within, crank case oil sample, and spare quarts of oil in use, any wolf carcasses, wolf hides or wolf parts, blood or hair samples which may be from a wolf, any video or still camera film, negatives, or photos which may show winter wolf hunting or trapping, as well as any digital still or video cameras and data contained within, any "bunny boots", and any wolf snares, any written records containing information pertaining to flight locations, dates, and passenger information from March 1st through present, any record pertaining to the hunting or trapping of wolves. All

taxidermy paperwork and transfer of possession papers for wolves from March 1st through present, landing gear, ski's, tail wheels, also satellite telephone.

(seal)

| | |
|---|---|
| 3/31/04 | "s/" |
| Date | Magistrate Margaret L. Murphy |

**April 2, 2004**: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. 4MC-04-004SW.

No search warrant was ever provided – even though asked for many times.

Receipt and Inventory of Property Seized

- See attached 12-210(s). Nine wolf hides.

I received the attached search warrant on 4/2, 2004, and have executed it as follows:

On 4/20, 2004 at 1:50 pm searched the premises described in the warrant, and I left a copy of the warrant with Kevin Hackan, Manager of Alpha Fur Dressers.

The above inventory of property taken pursuant to the warrant was made in the presence of Inv. Chris Thompson.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

"s/"
Burke Waldron

Signed and sworn before me on 4/8, 2004.

(Seal)

"s/"
Nancy R. West

**April 2, 2004**: In the District/Superior Court for the State of Alaska at McGrath. Affidavit for Search Warrant No. 3KN-04-81SW.

To: Any Peace Officer –

(X) An affidavit having been sworn to ~~before me~~ by Trooper Todd Mountain.

I find probably cause to believe that

(X) on the premises known as: Skull and Bones by Kenny Jones, Taxidermy, 48640 Jones Road, at Soldotna, Alaska, Alaska.

There is now being concealed property, namely:

A bag containing approximately 8-11 wolf skulls from David S. Haeg.

(seal)

4/2/2004 "s/"

Date David S. Landry, Judge

## APPENDIX H

**January 4, 2005** - Phone Call Between Investigator Joe Malatesta & Brent Cole - Transcribed

### 1/4/05 PHONE CALL

MALATESTA: Did you have any agreements with the State where you know sentencing was open? That you folks agreed to and then the State backed out?
COLE: Well I – I that's a difficult question. The State gave us a number of options on a number of different occasions and I've gone through all that with David on a number of occasions. You mean a straight open sentencing?
MALATESTA: Yeah an open sentencing you know where you agreed and then they - the State backed out. He was telling me something about he had to bring witnesses in and all and then the State backed...
COLE: Going to go to be arraigned at an open sentencing, yes.
MALATESTA: And why did they back out?
COLE: THEY DIDN'T BACK OUT THEY CHANGED THE DEAL.
MALATESTA: Well that's basically backing out, right?
COLE: That's a difficult question that's a hard legal question –um- quite frankly what he wanted wasn't goanna get him what he wanted anyway. What happened was then – ok no I've got to get this straight – I worked, I worked, I got a deal and then we were getting ready to go out there and David asked about a simple open sentencing, deal. And I said I you know I - I asked Scott Leaders about that. I said, "Can he do this deal just open sentencing?" And this is where David has a problem. And I – and I can understand it a little bit. And Scott Leaders initially said yes.
MALATESTA: Ok.

COLE: So no document had been filed at all.
MALATESTA: So it wasn't in writing?
COLE: It wasn't in writing.
MALATESTA: But you still had an agreement telephonically with the DA?
COLE: And we said, "Can he plead to the same counts and just do an open sentencing?" And Leaders was like "I don't know why he'd want to do that but yeah ok."
MALATESTA: Ok that's important to me.
COLE: Ok.
MALATESTA: That's what I needed to know.
COLE: But listen.
MALATESTA: I'm listening.
COLE: So then I went out to Dillingham on Thursday and on Friday – no the following Monday David was coming in to do the sentencing. Was it Thursday – yeah it was Thurs – was it Friday – Friday morning I went out to Dillingham. Thursday they filed the complaint against him, Friday morning – maybe it was Thursday he called me and said – we were talking and he said, "If David is – is not – he goes I'm not willing to do totally open sentencing with those deals".
MALATESTA: So he changed his mind?
COLE: RIGHT.
MALATESTA: Ok that's a problem for him is what I'm driving at.
COLE: Well.
MALATESTA: If you guys verbally had a – had a ...
COLE: Maybe it isn't. You got to – you got to think this through, ok?
MALATESTA: Ok - I'm trying but I - if you had an agreement tele ...
COLE: Just – just listen for a second.
MALATESTA: I am – I have been listening. Go ahead.
COLE: So I said - he said, "If he will forfeit the plane he can have open sentencing".

MALATESTA: Ok – I'm still with you.
COLE: "If he is unwilling to forfeit the plane and we have to have to have a hearing about that then I'm goanna file an amended information charging him with AS 08 54 720 A 15". Which makes him lose his license for a minimum 3 years.
MALATESTA: I gotcha – I'm still with you.
Brent - And I said, "Hey you know that doesn't make sense to me". And he said, "Well that's the way its goanna be". AND I SAID, "OK".
MALATESTA: That's great.
COLE: So then we said –um- what happened then. Then on Monday I met with David and we were scheduled to go to McGrath on Tuesday morning. So we worked and I presented all the different scenarios that David had in front of him. He was unhappy about what the DA had changed. And I was too.
MALATESTA: Well it's – it's important.
COLE: Listen to me it doesn't make that much difference.
MALATESTA: But I'm looking at this that you've been honest with me this morning and I knew you would be cause I work with so many lawyers and everybody told me you would be. It sounds to me like you had a rule 11 agreement verbally.
COLE: We had a couple different – opt - options.
MALATESTA: And Scot Leaders reneged. He just backed out on those – on that agreement.
COLE: HE DID.
MALATESTA: Ok well then he's got a problem.
COLE: Then – then on Monday afternoon we reached another deal. (Long pause) And that deal was what I thought David was goanna be willing to plea to.
MALATESTA: Ok - but the whole crust of this thing is you did a good job for him, you got him an agreement, and the DA backed out.

COLE: If you guys want to look at it that way yeah you can...
MALATESTA: All right I'm sure that Chuck may want to talk to you later but I'll try to pass this on. Took notes and I think I understand and you explained about the discovery.
COLE: One thing that the DA did back out on though is originally he said same counts that he was facing that are in that note that he sent to me "open sentencing".
MALATESTA: And that's the point that I'm interested in.
COLE: Right.
MALATESTA: And he backed out.
COLE: Then he changed that. But everything else was the same.
MALATESTA: Ok.
COLE: But the only thing the DA said is "if he is not goanna give up his plane then I'm going to change this from 720A08 to 720A15" which he did the very next morning anyway.
MALATESTA: Yeah so he backed out of the agreement. I mean guess what I'm hearing from you I just want to recap...
COLE: Yep.
MALATESTA: Make sure I don't mix it up. You had an agreement regardless of what all the parameters were you had an agreement with opening -
COLE: the options.
MALATESTA: Right all the options you had an agreement with an open sentence and basically the DA backed out.
COLE: RIGHT.
MALATESTA: That's all I need to know.

## APPENDIX I

**Alaska Bar Association Arbitration Transcriptions**
Haeg v. Cole Ak Bar Association #2006F007, 4/12/06, 4/13/06, 7/11/06, & 7/12/06.

[Beginning of Tape 1, Side A – 4/12/06]

HAEG: I hired Mr. Brent Cole to represent me against the State in a fish and game case. He came very highly recommended and I placed all my trust in him because he was a professional as I am in my field. He had me do things that made me extremely nervous –uh- giving the State a 5 hour interview – actually first *he had me give the State a map –uh- with locations of activities that the State was complaining about, had me give a 5 hour interview to an assistant attorney general and trooper -um- and come to find out he had no agreement whatsoever - nothing in writing - nada.* Eventually we came to a plea agreement that was very-very-very bad and I agreed to one plea agreement. I think Mr. Cole will maybe say that there were others but there was one because the State and Mr. Cole had all kinds of ideas of what I should plea to but they were so draconian that I was just horrified because the State was utilizing all of my information against me to – to over double the number of charges and have a sure victory before we ever started negotiating. Then -um- part of the negotiations - they came to me with this very draconian thing and I said "no". *I said I'll plea to all the charges, all 11 there should have been only 4 – I think around 4 that's what they had – what they say evidence of. So now they have 11 they just laying the whip to me I said no – I'll plea to all of them but I'll plea to the same 11 charges but I want open sentencing* and also I'll agreed to discuss a moose hunt that had been resurrected from quite a while before that had been investigated and essentially dropped. It had no

investigation and I told Mr. Cole that I did not want to discuss the moose hunt because I hadn't done anything wrong in regard to that -um- the incident the State was concerned about was a – a some acts during the Wolf Control Program out near McGrath -um- *so anyway my rule 11 agreement that I agreed to that Brent Cole said the Assistant Attorney General Scot Leaders agreed to was – there was one param[eter] – well there was a couple parameters. It was goanna be 1 to 3 years on my guide license to be decided whether – if it was 1 year it was because nothing was wrong with the moose hunt that they were kind of resurrecting, 2 years if maybe there was something wrong, 3 years if there was something radically wrong. But with the Wolf Control Program we would get 1 year and the moose thing would add on above that.* -Um- it was open sentencing other then that and we had to talk about the moose thing. *So that goes along, a date is set for that to happen in McGrath. I fly witnesses for the moose thing from as far away as Illinois, I fly people in from the bush, I take my kids out of school, I take 3 or 4 other people away from their homes, we drive to Anchorage, we show up at Mr. Cole's doorstep and he comes out and he says I just received very bad news – the prosecutor just changed the charges agreed to to much harsher ones.... Mr. Cole - I asked him well can we do anything about it he said "absolutely not that's just the way it is". And I felt like I had paid for that rule 11 agreement. We had given up a year of our guiding already - whole years income for me and my wife for the rule 11 agreement, we'd given him a 5 hour interview, and we had spent six thousand dollars getting people from all around the country in and Mr. Cole during the arraignment that happened rather then the rule 11 agreement he never even raised his hand. When I asked him if I could raise my hand he said "you could have but the judge would have just said 'anything you say can and will be used against you in a court of law' and that would have*

*been it". Nothing about evidentiary hearings or anything.* Anyway so that our relationship kind of went down the tubes after that. I fired him. *I was so angry about that and concerned about that I called Mr. Cole to testify after I had been convicted at and I called him to testify at my sentencing, had a subpoena issued to him, I paid for his airline ticket out to McGrath, paid for a hotel room, and Mr. Cole never showed up.* Now I don't know what you guys feel but I think when somebody's issued a subpoena it's mandatory and not optional and that's why I'm here today.
SHAW: And so you severed the relationship after the plea agreement fell through?
HAEG: About a month afterward.
SHAW: Ok. Thank you Mr. Haeg we'll get right back to you so you can present your testimony. Mr. Cole?
COLE: Thank you. I'll just be brief. We have some differences of opinion about what went on. I was contacted by Mr. Haeg, he was extremely distraught, we entered into an agreement, we had approximately six months where I represented him a little bit longer. Mr. Haeg –uh- was when I met and we went over this case in the beginning you're goanna learn is – was extremely distraught about the possibility of losing his right to guide and this is kind of a specialized area of law. I'll kind of try and go through what it is but he was facing at a minimum a loss of his license for 5 years and his concern for months and months and months to me were "I cannot lose my guide license. I cannot lose my business. I invested all this time and years in my business." When we evaluated the case at the beginning the case against him was very strong. *The case was very what I would call hot. Here was a guide, had gone outside a permit area, and with an airplane slaughtered a number of wolves. Nobody knew about it except the DA, myself, some of the troopers and I thought – I thought he was going to receive a significant punishment because it made the governor look bad, it made the executive branch*

*look bad, it put in - at risk the whole wolf hunting - airborne wolf hunting policy.* I was told that the feds were involved - there was just a lot of bad things that I saw coming out of this and so and when I looked the evidence I spoke with Mr. Haeg for a significant period of time and we made the decision that it was in his best interest if he wanted to continue to guide to cooperate with the government. That was the decision knowingly that I explained - we then began a period of negotiation with the government. I will tell you I did everything in my power – I thought to help Mr. Haeg. I only wanted the best for him. At the end of this thing – I have a check sitting right here. If you tell me that I did something wrong I'm goanna write you a check. I don't believe I did anything wrong. I charged him $13,000.00 for seven months of intensive care. I wrote off over $3,000.00 of it - about 25%. I walked away from the case. Bad events happened and I feel bad about that. I've always told him that I wanted the best for him. He doesn't agree with that but like I said I don't think I've done anything wrong. If I have you know I'll sit down and pay it but I really would like to get this behind me - not that I think that this is goanna end this event at all.

HAEG: I wish you to know my current attorney refuses to represent me here. That's why I'm here by myself. Also like to point out I've flown people from as far away as Illinois [Pennsylvania] for this - I don't know if we'll get through all this tonight but I think it actually is going faster then I though it might so but I also goanna let you know that I'm not goanna rush anything and if we have to take this up some other time I would like to do that because *this thing has eaten my lunch for 2 years, it aged my wife 15 years, and has destroyed my livelihood.* My wife and I hired Brent Cole on 4/6/04 to represent me against the State in regard to charges stemming from the Wolf Control Program. *Brent Cole told my wife and I quote, "this is goanna be a very big and political case and the governor has*

*probably already been told about it from the prosecutor; we need settle this before it snowballs out of control; I suggest we cooperate completely with the State; and that the press and other people will very probably be harassing you."* My wife attended the first meeting with Bre[nt] Mr. Cole when we hired him. After that I had a friend of mine Tom Stepnosky that attended every meeting between Brent Cole and myself - I tried to get Mr. Cole to look at my case – to go over it with me look for weaknesses. He said you're a cooked goose the only thing we can do is – is –uh- plea out. *I actually pointed out to Mr. Cole that the affidavit for search warrants had error and was essentially perjury – well it was perjury because it was a sworn affidavit. He told me "oh that doesn't matter". This was kind of right in the beginning and the affidavits I guess the significance of it is the affidavit said that the sites or the – the information the State had put the activity in the same game management unit as my lodge. Well when they showed us by GPS coordinates and on a map that they had – actually that I'd given them it was in a different game management unit but they were putting for their search warrant they had falsified where that was to –uh- put it in the same game management unit as my lodge and Mr. Cole said that – that doesn't matter.* -Um- as I said I asked Brent Cole numerous times if we should go over my case to look for other evidence to help us either establish my innocence or give us bargaining power and not one time did he go over anything with me. *He just kept saying "no we just need to cooperate with the State". Brent Cole told me "for a good deal you need to give the State a map". I gave Brent Cole the map he wanted on or about 4/22/04 and that's –uh- a piece of evidence.* It's – there's a – a letter from Brent Cole to Scot Leaders of 12/23/04 and he explains that. And can that be evidence then?

SHAW: Umm hmm. The letters dated 12/23/04?

HAEG: Yes I believe so and it should have been a letter

from Brent Cole to Scot Leaders.
SHAW: Good ok we enter that one on exhibit. And we'll mark that one as exhibit one. Ok you can go ahead.
HAEG: *On or about 4/27/04 Brent Cole advised me Assistant Attorney General Scot Leaders now needed a detailed interview conducted by him and Trooper Brett Gibbens.*
*On 6/11/04 I gave Prosecutor Leaders and Trooper Brett Gibbens a 5-hour taped, truthful and detailed interview of Tony Zellers and my activities during the Wolf Control Program...*
METZGER: What was the date of that again?
HAEG: 6/11/04. We don't have a transcript of that because we tried getting four or five from the State and Brent Cole can back me up on this. Everyone they sent me was only part of the tape was good and the rest was all garbled. Anyway this meeting occurred at Brent Cole's office with Brent Cole and Tom Stepnosky also present. *On or about 6/19/04 Brent Cole advised my wife and I to start returning deposits and canceling hunts for the 2004 fall moose & brown bear season and the 2005 spring brown bear season that started in less than 2 months time. Mr. Cole also stated I should quit booking hunts and cancel all of our paid advertising, which – which we did. Mr. Cole stated Assistant Attorney General Scot Leaders required I quit guiding for at least 1 year and that sentencing would likely happen around guiding time so I better cancel them.* These hunts represented a whole combined yearly income for my wife and I. We have no other income. It was necessary to start canceling the hunts before the clients started making arrangements they could no longer change. On 6/23/04 Tony Zellers gave Prosecutor Leaders, Investigator Mitchell Doerr, and Trooper Brett Gibbens a 4-hour taped detailed interview. Tony Zellers stated he did not want to do this interview but his attorney Kevin Fitzgerald told him he had to because I had already done so and if Tony didn't

conduct the interview he would be seen as uncooperative. On or about 8/18/04 - which is I don't know 2 months or so. A little over 2 months after we had given them everything - Brent Cole and I received the first written offer from the State charging 11 offenses. Without the statements from Tony Zellers and I the State would have been able to file less – file less then half of these charges.

*On or about 8/19 I spoke with Brent Cole about written offer from State and said no to the offer. I asked about the possibility of pleading to all of the charges – cause we'd given – you know they had all the charge – I didn't even say about cutting down the charges from eleven to you know ten nine eight seven six five four. Cause they actually only had evidence of four. (Changing tape)*

HAEG: *I'd like the evidence of the open sentencing is Chuck or –uh- Brent Cole's invoice number 19961 which he bills me it says "Dave Haeg asks about open sentencing" it's in August.* So can we admit his billing invoices?

SHAW: Umm hmm. Yes we can. See if we can locate that.

HAEG: And that would be exhibit number two then?

METZGER: It would be number three.

HAEG: *Ok on or about 9/14/04 State Prosecutor Scot Leaders agreed to the Rule 11 Agreement – or my proposal I guess - with "open sentencing" AS 8.54.720 – I think it is - (a)(8)(A) main charges* – and that's the ones with –uh- that dealt with the wolves or the harvesting of the wolves - agreement to discuss a two thousand and three moose hunt, with the guide license suspension to be – be – to be between 1 and 3 years dependent upon the magistrates decision as to the guilt on the moose hunt. In other words if there was no guilt I would get a 1 year suspension of my license, if she thought I was partially guilty I'd get 2 year suspension of my guide license and if she thought I was guilty I would get a 3 year suspension of my guide license. This was the only sentencing issue that had parameters set for the magistrate. The magistrate would decide if I would

go to jail – for how long, if I'd be fined and how much, and if I would lose my aircraft, and the weapons, and satellite telephones, and cameras, and my wife's bunny boots, and five pairs of my bunny boots, and on, and on, and on, and on, maps, and tons of stuff, vhf radios. I mean they basically came through (makes blowing sound) kind of went shopping. *On 9/27/04 Mr. Cole met with Prosecutor Leaders and set sentencing for 11/9/04 in McGrath and you can see Brent Cole's billing invoice number 20119.* And I guess if it's already admitted it's just another one of the numbers of the same one that's admitted. It's just another part of it I guess.

SHAW: Were you to enter pleas of guilty and be sentenced on the same day then?

HAEG: Yes. Yep.

SHAW: Ok.

HAEG: *I asked Brent Cole if this deal could be –uh- broken because I was going to be flying in people from as far away as Illinois and Silver Salmon Creek to testify about the moose hunt for this Rule 11 Agreement. Brent Cole told me no, this was a binding agreement. On 11/4/04 Prosecutor Scot Leaders filed the information with McGrath Court in anticipation of the Rule 11 Agreement.* See Arraignment dated 11/9/04 and I guess can we admit that if we have it and that's a transcription my wife made and I don't know if that's allowed to be admitted or not.. She transcribed the tape that was made of the arraignment and it's easier to look it...

SHAW: Is it – do we already have that?

HAEG: I believe so – yes.

SHAW: *So on November 4th was the information filed...*

HAEG: *Yes.*

SHAW: *...as you...*

HAEG: *And yet...*

SHAW: *...thought you had agreed?*

HAEG: *Yes.*

SHAW: Ok.
HAEG: Yep. Yeah it was for the A – (a)8(A) charges and that was 5 days before the – the changes – or the yeah the change of plea or plea agreement was supposed to happen and it's number 10 in my – in my deal it's number 10 which is the arraignment.
METZGER: It doesn't look like – it looks like it's a straight transcript. Maybe Mr. Cole can tell us if he read and did it look.
COLE: I read it. I didn't listen to the tape. It – it's – it meets my recollection of the events that occurred but I have not listened to the tape.
HAEG: Ok. *On 11/8/04 I traveled to Anchorage with my wife Jackie, my daughter's Kayla & Cassie, Drew Hilterbrand, Jake Jedlicki, Tom Stepnosky so that we would be ready to fly out on the 8:00 a.m. flight the next morning from Anchorage to McGrath so we could attend the change of plea slash sentencing hearing that was scheduled at 10:00 a.m. the next morning. Tony Zellers was flying in from Illinois and arrived in Anchorage late that afternoon. When we arrived at Mr. Cole's office at 3:00 p.m. for a quote "sentencing strategy meeting" unquote - he greeted us at the door stating that he had quote "just received very bad news from Scot Leaders" unquote. Mr. Cole then showed all of us a fax received by his office Marston & Cole dated 11/8/04 at 12:59 p.m. or just 2 hours earlier or before we had arrived at his office.* And I guess I'd like to admit that.
METZGER: What was the date again?
HAEG: It was dated 11/8/04 12:59 p.m. It should be an amended information. And I don't you know I didn't know this was how it was goanna go so I don't...
METZGER: Ok I think – I think you can go ahead.

HAEG: Ok. *This fax was of an amended information that changed the charges the State had agreed to to ones that carried a minimum 3 year license revocation and a possible revocation for life of my master guide license. This was a huge leap from the 1 to 3 year license suspension I had agreed to plead no contest to the next morning in McGrath. At this time Mr. Cole stated that he could not believe Prosecutor Leaders could do this since we already had a complete and binding deal. David Haeg, Jackie Haeg, Tom Stepnosky, Tony Zellers, Drew Hilterbrand & Jake Jedlicki will all testify under penalty of perjury that Mr. Cole made these exact statements leading us to believe that this was the very first time he had received any information whatsoever that the State was unwilling to honor the Rule 11 Agreement that they had made and for which my family had given up so much for – given up so much and had spent so much time, money & effort on.* See exhibit number 3 - I don't know what that one actually is but Brent Cole's letter of July 6 2005 and I don't know if that's been admitted or not.

METZGER: The – there is no letter of that date.

HAEG: Ok Brent Cole – can we admit that one then? And that was to me – Brent Cole's letter I have to me – and on my thing it's exhibit – exhibit number 3 on my deal but it'd be 7?

METZGER: July 6th letter?

HAEG: Yeah.

METZGER: Here it is.

COLE: Yeah I have that and I don't object to that.

METZGER: We're goanna mark that – it's going to be exhibit number 7. It's admitted by stipulation.

HAEG: And it says – where Brent Cole states *"On Monday November 8, 2004, you, your family and several witnesses came to our office to meet in preparations for the arraignment change of plea scheduled to occur in McGrath the next day. It was at that time I informed you of Mr.*

*Leaders decision* and outlined your legal options." I was absolutely devastated, crushed, and without hope. The deal for which I had already given everything I could possibly give without jeopardizing my ability to provide for my family's future had just been pulled out from under my feet. *When I asked Mr. Cole at this time how Assistant Attorney General Scot Leaders could break the deal only hours before we were supposed to conclude at McGrath he stated quote "that's the way it is" and quote "the only thing I can do is talk to Prosecutor Leaders boss, a women I used to work with" and quote "we can't go to McGrath tomorrow and get this over with".* Later that night *Mr. Cole told me that Prosecutor Leaders would require me to first forfeit my plane to him to get the same Rule 11 Agreement I'd already paid for.* Tom Stepnosky, Drew Hilterbrand, Jake Jedlicki, Tony Zellers were all present during this. *At this point it seemed to me that Mr. Cole and Mr. Leaders were working hand in hand to strip me of everything possible. What was to stop them from changing the deal again after they got my plane?*

SHAW: Was the hearing on the 9th cancelled?
HAEG: It – we plead not guilty. We...
SHAW: Ok so you went to McGrath...
HAEG: Yep.
SHAW: ... but just entered not guilty pleas?
COLE: No – we – we didn't...
HAEG: Ok. No we didn't no ...
SHAW: You're not testifying.
COLE: I know but...
SHAW: You're testifying (exhales)...
HAEG: Ok on – I – let me just get back to my narrative.
SHAW: What's your best recollection of what happened?
HAEG: *On 11/9/04 Brent Cole did not even try to tell the magistrate that Prosecutor Leaders had broken the Rule 11 Agreement let alone try to enforce it when I was arraigned*

*telephonically.* See exhibit 10 and I think that's already been admitted I think somewhere. The arraignment?
SHAW: Umm hmm. Yes that's already an exhibit.
HAEG: Ok *when I asked Brent Cole if I could have tried to get the magistrate to enforce the Rule 11 Agreement he replied quote, "She would have told you anything you say can and will be used against you and that would have been the end of it". When I insisted that Brent Cole try to enforce the Rule 11 Agreement he stated quote, "I can't force Leaders to do anything because after you are finished I still have to be able to make deals with him".* During a meeting with Brent Cole & Tom Stepnosky on 11/22/04 - and that's a tape that we – my wife transcribed and I don't know if we can admit that or how that works but?
SHAW: -Um- are you talking about something that we have?
HAEG: It could be. Do you have a transcription dated 11/22/04? Let me look here. Yep you should – it would be number four in my deal and it's a tape between me and Brent Cole.
SHAW: Mr. Cole have you looked at that?
COLE: -Um- I – my recollection and I'm not sure about this is that this was taped without my knowledge and so I don't know that I've ever heard this tape. So I don't know.
SHAW: So why don't you just tell us right now what you remember about that conversation and what was important about it for...
HAEG: Ok.
SHAW: ...us to know...
HAEG: I – I think we've got...
SHAW: ...for us to know.
HAEG: Ok. I think I've got most of that -um- during meeting whatever – during 11/22/04 –uh- I said quote, *"I already gave up a whole worth – a whole years worth of income" unquote – Brent Cole or Brent says, "I know that David" – I say, "Doesn't that account for anything?" – Brent*

*says, "Yeah it does – that's – that's what we negotiated." - Um- I guess the significance of - here Brent admits that we gave up this whole years income during negotiations. Why didn't he stand up for the Rule 11 Agreement then? During the same meeting on 11/22/04 –uh- I say, "Yep but you know it - I also remember why didn't – why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that? Brent says, "I don't know why he didn't do that. That pisses me off. He just – he has caused me to have to sit here and explain this to you 25 times. He did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him." At the change of plea on 11/9/04 why didn't Brent Cole tell Magistrate Murphy that we had a Rule 11 agreement and that Mr. Leaders broke it and we had paid for it? Many times before I fired Brent Cole on 12/3/04 he tells me things like quote, "when Leaders screwed you he really screwed me" and quote "I can't piss Leaders off because after you're done I have to be able to make deals with him" and quote "just suck it up" unquote - when I ask how the State could continue to ask me for more and more.* I hire attorney Chuck Robinson on 12/10/04 and end up paying him almost $30,000 to try to repair the damage Brent Cole had done. Chuck Robinson tells me quote, "it doesn't matter what Brent Cole did to your case in the past we just have to live with it". *On 7/6/05 Brent Cole writes me a letter at my request to memorialize the Rule 11 Agreement. In it he tells me he knew for – I know it's either 4 or 5 – 4 or 5 days the rule 11 agreement was going to be broken.* And that's a letter to me on 7/6/05 and I think that's already been admitted, I believe.

SHAW: Yes.

HAEG: Ok. *In other words when Brent – in other words Brent Cole lied to me and 6 other people and let me spend $6000 dollar – and actually it's much much more then $6000 dollars because –uh- actually Brent charged me for*

*his airfare out to McGrath and hotel rooms and never refunded it to me. So the 6000 is what I spent not included what he billed me for. When he knew it was just a waste unless the Rule 11 Agreement was enforced, which he didn't even try to do.* I also paid Brent Cole several thousands of dollars during these two days for his time, airfare to McGrath and whatever fees of $200 per hour – I guess there in then. This also placed enormous stress on me to cave into Brent Cole's and Prosecutor Leaders demands that I give up my $80,000 plane in payment for the same Rule 11 Agreement I had already paid for. -Um- and I guess I don't now if I ever remember telling you but when the rule 11 agreement came and went that night Brent Cole said when he was talking to Chuck Leaders – Chuck Leader or Scot Leaders said I could have the same rule 11 agreement if I just sign over my $80,000 plane to him first. Then I could have the same deal I'd already paid for. *I end up going to trial and after I'm convicted of 9 of the 11 charges I demand Chuck Robinson, my new lawyer, subpoena Brent Cole to testify that I had fully cooperated with the State until they had broken the Rule 11 Agreement and Brent Cole had failed to even try to enforce it, that my wife and I had given up a whole years income for the Rule 11 Agreement that the State had broken, and that we'd spent $6000 at getting witnesses to the Rule 11 Agreement the State had broken. I paid for Brent Cole's subpoena to my sentencing, his witness fees, his airfare to McGrath, his hotel room, and then he never showed up to answer the 56 questions my wife had typed up for him to answer under oath.* The most amazing thing is that when I received the itemized billing from Chuck Robinson after this date it showed he and Brent Cole had a telephone "confer" just the day before Brent was supposed to travel to McGrath to testify. I now realize that if Brent Cole would have had to answer these questions, under oath, he would have been found ineffective, my sentence would have been reversed

and I would have been able to sue him for gross malpractice.
SHAW: Oh why don't you just -um- –uh- you subpoenaed Mr. Cole to testify at your sentencing you advanced to his airfare and so forth.
HAEG: Ok and that's probably true ok.
SHAW: And what was the – *what was the sentence that was imposed?*
HAEG: *5 years of my guide license and I'd already given up a year so effectively 6 years on my guide license, forfeited my airplane – replacement value of probably close to $100,000 dollars, –uh- $20,000 fine – actually 19 I'm doing this off of memory $19,500.00 with all but $6,000 suspended.*
SHAW: Ok. –Uh- did Mr. Robinson raise the question before the court about the subpoena to Mr. Cole?
HAEG: I don't know the moose thing went from 11:00 a.m. to 8 or 9:00 p.m. and when it got time for that it was 2:00 in the morning and I was – and I'd been up for almost 30 hours straight. I might have been there in person but I wasn't there in my brain. I don't really know what happened.
SHAW: So you don't know whether Mr. Robinson tried to enforce the subpoena against Mr. Cole?
HAEG: I have no idea.
SHAW: Was -um- -um...-
HAEG: Can I ask – well actually I guess I don't know. I've got the 56 questions I wanted Brent Cole to be asked under oath – I mean is this an appropriate time to ask him or tell you what I was going to ask?
SHAW: It's not the appropriate time to ask him the questions...
HAEG: Ok.
SHAW: ...but you can -um- -um- if you have those questions you can...
METZGER: I think they're...

SHAW: ...introduce them as an exhibit. I think that they were submitted to us.
HAEG: Ok.
METZGER: Do you know what number they were in your materials?
HAEG: -Um- number 6 in my materials.
SHAW: Mr. Cole have you taken a look at these?
COLE: I have.
SHAW: Do you have any objection to them being admitted for this purpose?
COLE: I object I don't understand what the relevance is.
SHAW: –Uh- Mr. Haeg wants to introduce them to show the questions that would have been put to you had you -um- I assume these are the questions that he would have given to his counsel and asked his counsel to give to you at the hearing. Cause they're only questions I don't know that -um- well it doesn't suggest what your answers are goanna be to the.
COLE: My relationship had ended months ago with Mr. Haeg so I'm not – I – I – I'll have my opportunity to talk – give my side of this thing.
SHAW: Ok. We understand that this didn't take place during the attorney client relationship. -Um- and Mr. Haeg -um- is it possible for you to tell us why you think it's important for us to know what these questions were?
HAEG: Yes I think that -um- and I'm new to this being a lawyer but I also know that lawyers are held to a pretty high standard and if Mr. Cole would have answered those questions under oath I would have had a – the basis for an Ineffective assistance of counsel claim because it would have been on the record. And I think it shows – I think it shows a motive for him to not show up – like he should've for a subpoena because it would have been I think a subpoena he would have been under oath. I think he would have been required to answer the questions and I would have had a framework that would have allowed me to

attack what happened to me because I was denied my constitutional right to a fair trial and I believe and you know I don't know how I can say this but I think there's no question whatsoever Brent Cole and Chuck Robinson my attorney deprived me of my constitutional right for witnesses in my favor and if you think that reading those questions wouldn't have possibly allowed the judge to not sentence me to an additional 5 years to the year I had already given up for an agreement that they broke. I think those questions are really important.

SHAW: Well I'm inclined to – to receive them.

HAEG: Ok.

SHAW: But what we can see from the questions is –uh- we can infer what your purpose was in trying to have him come to...

HAEG: Yep.

SHAW: ...the hearing...

HAEG: -Um- I just – I guess I just have one more statement or I don't know. I guess just in Brent Cole's representation of me I did more investigating on my case requesting of materials from the State then he ever did.

SHAW: Ok. Mr. Cole you can cross-examine.

COLE: Now when was the search warrant executed on your house?

HAEG: April Fools day (laughs)...

COLE: April first?

HAEG: Yep.

COLE: Right. And so –uh- and the – and they didn't just execute it on the – on your house they executed a search warrant at your cabin -um- which is in the general vicinity of Stony River, right?

HAEG: Correct.

COLE: And you had affidavits -um- that accompanied the search warrants which you brought with you and – and you showed Mr. Fitzgerald and myself –uh- when you met with us, right?

HAEG: I don't think I ever showed the affidavits to Mr. Fitzgerald. I showed them to you.
COLE: And those outlined – those affidavits outlined -um- how the State had come to believe you were responsible for shooting wolves same day airborne outside the -um- permit area where you had a permit, right?
HAEG: Yeah it stated what evidence they had, yep.
COLE: And then I have a what's a three page – one two three four page affidavit that I would move for admission. This was an affidavit that was accompanying the search warrant by Mr. Brett Gibbens.
COLE: And will you agree with me that one of your most significant concerns was not losing your guide license for 5 years?
HAEG: That was a significant concern. Probably equal with losing my airplane.
COLE: We discussed the implications of what would happen if you were to be charged and didn't get cooperated and I told you that in my opinion based upon the information and the affidavit the State had a very strong case against you, right?
HAEG: *Yeah and I pointed out that affidavit was based on perjury* and I said hey I found this there might be a whole pile of other stuff I could find and I – was I very very thorough in my researching my case?
COLE: Right. Isn't it correct that I explained to you that if you didn't cooperate you ran the risk of the State filing charges against you and that in my opinion you ran a significant list – risk of losing your license for a least 5 years – do you remember those conversations?
HAEG: As I said you were very explicit in what your concerns were and I don't know if I can say anymore then that you know I just know that my concerns as I researched became less and less.

COLE: Did you – did – are there letters out there where you sent me concerns about the decision to cooperate with the State?
HAEG: Now run that one by me again.
COLE: Did you ever write any letters expressing your concerns about cooperating with the State in this case?
HAEG: I don't know if I ever wrote any letters but before I cooperated I talked to Tony Zellers and Tony Zellers - he would never do that and he said, "man Dave what are you doing?" I says, "Well my advocate says that I need to go in and give them everything" and at that time you know I – I my brain was mush, I was scared crap – shitless - whatever – oops sorry about that. I was very scared because you had painted this picture of the governors goanna be notified and it's goanna be a big deal and man they're goanna come and whoop you like nobodies ever been whooped before. And so I was – I was very frightened but you know I guess Tony Zellers and I had huge concerns but you just were adamant. *You were adamant "you have to cooperate" I think as I said I quote – quote you "we have to stop this before it snowballs out of control".*
COLE: Well I expressed to you my concern that if...
SHAW: Mr. Cole you can't testify now.
COLE: Ok. Isn't it correct that *I expressed to you my concern that if charges were filed and this became public knowledge that there would be adverse consequences like people protesting at your property, people sending you negative literature, there were certain consequences that I was afraid of if we weren't able to reach a resolution of this case with the State of Alaska and they went forward, correct?*
HAEG: Yeah you told me all about that which scared me a little but frightened my wife to death and I – I guess just stop me if I'm getting out of line here. -Um...-

COLE: I understand that but you'll agree with me that that was a decision for first the prosecutor to make and then the judge to make, right? Cause you didn't – you couldn't dictate what the terms of your settlement were going be, could you?
HAEG: We can try before we gave them everything. After we – after you had me give them everything no we really couldn't but before I guess just let me know if this aint whatever. If you and I are playing poker and we each have five cards – and I hand you my five and now you have ten and I none and then we start negotiating – I'm in a poor position.
COLE: You don't think you were in a poor position to negotiate before we did that?
HAEG: *I think we had enormous leverage before that. They had – they had evidence they say of four crimes and eleven and guaranteed with maps and all this other crap. Their search warrant had perjury on it* and I guess I can't quote any case law here?
SHAW: No this isn't the –uh- this...
COLE: I said my question was do you really think you had a great deal of bargaining power before you agreed to give a statement to the State?
HAEG: We probably had ten thousand times the bargaining power before we gave the statement as we did afterward.
COLE: Ok. Do you have a copy of the –uh- August 18th memo from Mr. Leaders? That's the one that's been admitted I believe.
METZGER: Exhibit 2.
COLE: Just take a look at that for a second.
HAEG: Can I see it for a second? Yep I've seen this.
COLE: And – you recall that there was the – the substantial – that you rejected that right, right?
HAEG: Correct.

COLE: And – and I told you that – do you recall me telling you that I thought we could do better then that? Do you recall that?
HAEG: You handed it to me and said "here's the offer – how do you like it" and I said "holy crap" - I said "I want a judge to look at what's going on here because I feel I've been prosecuted as a big game guide going out and committing big game crimes to make money" and here I was out there spending thousands and thousands of dollars to help the State do their job that they should have done before and –uh- you know so that was my position on it. I said "holy crap". You never ever told me you could do better. I would – you'd bring me stuff and I'd say "holy crap – huh uh" and I'd maybe – I remember making some suggestions of what might be more in line with what I could live with and you would go give them to Mr. Leaders and get back to me but as far as you saying "I can do better" I don't believe I ever say that.
COLE: You were helping the State out, basically, is what you thought?
HAEG: The State sent me out to kill wolves and we went out and killed wolves.
COLE: So basically the means justify the end?
HAEG: Nope.
COLE: Well you killed the wolves – that's – that was your job. It didn't make any difference that it was outside the area of your permit then?
SHAW: Mr. Cole. You're arguing with the witness.
COLE: *So your understanding then is that you had a criminal rule 11 agreement going into the November 9th hearing. Was that ever placed in writing?*
HAEG: *Parts of it were placed in writing, yes and a lot of it is – was recorded between you and Joe Malatesta and I guess you know the way this came out I would have liked to admit that to evidence and I don't know if I can at this time but -um- there – ok I'll put it this way. You told me you*

*always deal on your word. Ok. So not much of this was ever clearly put in writing but lots of it was in writing in little bits and pieces and if you pull it all together there was a rule 11 agreement – in writing if you pulled the writing from different places and put it together.*

COLE: So when you – let's go to the November 9th day or the 8th the day before the hearing, ok?

HAEG: Ok.

COLE: You – you drove up from Soldotna, right? That day to Anchorage or you came in early?

HAEG: Correct.

COLE: Yep ok. Now you testified about what your interpretation of what happened on the 8th. Do you remember being in my office on the 8th when we were discussing all of your options at that time?

HAEG: You gave me a ton of options and I have it on tape and I said they're not options to me. I had one option that I came here for and it was broken and taken away from me after I had paid for it and I believe Tom Stepnosky put correctly when I was sitting there he said –uh- if you give him the plane what's to stop him from taking everything else? So those might have been options to but they weren't options to me.

COLE: So you're not denying that we went through all of the options whether you thought them – thought they were good options or not – we did go through all of the options that you had at that time?

HAEG: *You (changes tape) you told me the options you and Scot Leaders wanted to give me and I said "they may be options to you guys but they're not options to me."*

COLE: Do you recall sitting in the conference room when I received a call from Scot Leaders and negotiating the terms of what we thought was another new acceptable agreement between the parties?

HAEG: Let me state again you and Scot Leaders had a lot of deals that were acceptable to you two I had one that was

pretty harsh that I accepted in the whole entire ordeal – I had one and that's the one I drove up to Anchorage for and got pulled out from underneath my feet literally hours before it was supposed to happen.

COLE: Do you remember telling me that the deal that we were talking about in the evening of the 8th was acceptable to you and there was no reason to go to McGrath in the morning?

HAEG: Now run that by me again.

COLE: Do you remember talking to me and telling me in the evening of November 8th that the de – deal that we had on the table was acceptable and there was no reason to go to McGrath for the sentencing in the morning?

HAEG: *I never told you that and I have a bunch of people wandering around here somewhere that was present and they said you never – because all of those deals entitled giving up my PA12 airplane and I never ever - ever said I was giving that up. So if you're telling me I did you're - you're sorely mistaken.*

COLE: *You didn't get on the plane in the morning, right?*

HAEG: *When we arrived you said we can't go out there because if you plead guilty to these things you're goanna – you maybe lose your guide license – master guide license for life. You said we can't go out there. You told me that. You told me when we arrived – when we weren't going out and I actually have all these people here that's goanna back me up on that.*

COLE: -Um- so you have a transcript of the arraignment, the case gets set for trial down the road, and then you ultimately determine that you didn't want me to represent you on this case, right?

HAEG: Yeah after you started lying to me on a sustained basis – you tend to get nervous of an attorney. That's why I started taping you without you knowing because I would come in after meeting after meeting and you would deny saying stuff and I'd look at Tom and Tom's eyes would be

like this – we're like holy crap – I'm paying this man two hundred dollars an hour and he says one thing one day and the next day I come in he's telling me another.
COLE: I – I don't think I'm goanna have much more. I just want to...
SHAW: ...the record in the –uh- Haeg and Cole matter. -Um- Mr. Cole you were still cross-examining Mr. Haeg and you were goanna take a look at your notes.
COLE: No I don't have anything further.
SHAW: Mr. Haeg -um- if Mr. Cole has asked a question that you want to elaborate on or you want to complete an answer that you gave when Mr. Cole was cross examining you can make another statement as a kind of a reply the issues that he's raised. If there's something else that you need to tell us.
METZGER: And you're – you're under oath, still.
HAEG: Ok. -Um- Mr. Cole said that I changed goals in the middle of my case and I guess you could – you could look at it two ways. When I came into him and he didn't really look at the nuts and bolts of my case and told me doom and gloom and wanted me to just give the State everything and beg for mercy that was kind of his idea and I was so scared I was willing to start down that path and give the State everything – maps and interviews and everything. He says I changed goals in the middle of the case but that isn't true it's as I started researching my case I realized that we weren't -- you know that – that it indeed in my mind was not you know as – as gloomy as what he had said and what made me very nervous is he never went over the case with me. -Um- you know as I said I'd bring up stuff about the search warrant and stuff so I don't think it's true that I changed goals. I think as I gained knowledge of my case I adapted to my case. -Um- I don't know – I don't take very good notes and I guess that's – oh -um- he had said that the State have a very strong case against me but how do you know that if you don't go over the case with your client? -

Um- he also said it was very hot and I don't really know what he means by that but I think that - that means that the – that it's a very –uh- it's a case that someone could be made an example of above and beyond what they should be. And I think the way to protect someone from that – from what I started seeing is to not give the State all the means that they need to do so. I think it's better to hold the line. - Um- and I guess that's kind of about it. As – as I looked at my case and researched it more then my attorney did I realized that we had either a basis to go to trial because of the charges they had charged – which were guiding related charges rather then permit violations – at – which is what we were under or to file motions to substantially weaken the – the State's case. Mr. - Mr. Cole never filed a motion I don't believe in my entire case. In fact – in fact I suggested doing so and he said "no I still have to work with these people after you're done." So I don't know I think that's about all I have on notes.

SHAW: So -um- *Mr. Haeg I take it that you reached an agreement with the State of Alaska to participate in that Wolf Control Program?*

HAEG: *Yes.*

SHAW: *Ok. So you were authorized to kill some wolves by some means?*

HAEG: *Yes.*

SHAW: *Ok. Did they put a limit on the number?*

HAEG: *–Uh- not for me personally. They had a total of 40 or actually it was up to like 50 some – the target goal was 40 and the program had been running for 4 months and it was about a 6-month program. Been running for 4 months and up until the 4th month they had taken 4 wolves.*

SHAW: *So in –uh- this offense that you were charged with there's no claim that you'd exceeded the goals or the limits?*

HAEG: *Didn't even come close.*

SHAW: *Not too many wolves?*

HAEG: *Just didn't even come close.*

SHAW: *-Um- and the – the manner in which the wolves were taken was that the subject of criminal charges?*
HAEG: *No.* Well yes because what they said is we were – it was not –uh- they said it had nothing to with – or the prosecution said it had nothing to do with the permit. Had everything to do first with the first charges of same day airborne shooting of a furbearer which is a trapping violation and then when they broke the rule 11 agreement they filed new charges that were same day airborne big game – like moose and bears. And...
SHAW: Ok so – so I take it...
HAEG: ...a wolf can be either.
SHAW: *Ok -um- if – let me just focus on this little element of it. If you are lawfully participating in the Wolf Control Program is it ok to shoot from the air?*
HAEG: *Yes.*
SHAW: *Ok. So the means if you're participating in the Control Program is ok?*
HAEG: *Yep.*
SHAW: *If you follow all the rules that element of it's all right?*
HAEG: *Yeah.*
SHAW: *Ok. And then -um- so was the only violation the location of the wolves? If you had taken...*
HAEG: *Yeah there was...*
SHAW: *...them in the manner that you did...*
HAEG: *Yeah.*
SHAW: *...and you took the same number of wolves that you did...*
HAEG: *Yep.*
SHAW: *...in that case the only problem is where you shot them?*
HAEG: *Yep.*
SHAW: *Since you took them out of the area they said it wasn't part of the Wolf Control Program...*
HAEG: *Yes.*

SHAW: *...and therefore we can charge you with...*
HAEG: *With whatever, yep.*
SHAW: *...you weren't part of the Wolf Control Program at all...*
HAEG: Yep exactly...
SHAW: -Um- and in what form was the plea agreement that you reached – you said that Scot Leaders had reached an agreement with you and then when you arrived on November 8 you found that he was reneging on the deal or something. In what form was the plea agreement up till November 8th?
HAEG: It was just verbally with –uh- ok let me just think about this – they – yeah it was pretty much just verbally other then some – some little emails about part of it that you know –uh-
SHAW: Emails between Mr. Cole and Mr. Leaders?
HAEG: Well between me and Mr. Cole I believe -um- and I don't even know if I have them here because nothing was nailed down in writ[ing] – I just...
SHAW: Was Mr. Cole discussing with you what the elements of it were – the guide license issue, the fine issue, the plane issue?
HAEG: Yep it was all verbal and Mr. Cole gave me that first offer that I – we said (makes exhale sound) I said well – I'll - I'll do this – I want a judge to look at what's going on here and he verbally talked to Mr. Leaders I believe and then got back to me and said "yep done deal."
SHAW: The only document that you had then was the information – that you eventually got – that first information?
HAEG: Yeah that was filed like 5 days before the – the where I was supposed to you know – was supposed to take place – the rule 11 agreement was supposed to take place in McGrath.

SHAW: And your understanding was that -um- you would plea guilty – plea guilty to each of the charges on that first information and that sentence would be imposed that day?
HAEG: Yep and but probably plead no contest or whatever.
SHAW: Ok.
HAEG: So – plea to or I don't know how you do it – plead to it. But I intended on pleading no contest.
SHAW: Did -um- Chuck Robinson tell you why Mr. Cole didn't come to your sentencing?
HAEG: -Um- actually he said something -um- Brent Cole can't make it. And I said – I think I remember and actually my wife was there and I – I just kind of -um- that time I was under a lot of stress and I just you know I thought subpoena's were subpoena's but you know...
SHAW: Did the -um- judge know at your sentencing that you had given your statement to the – had cooperated with the authorities without the benefit of a plea agreement?
HAEG: (exhales)
SHAW: That you'd come forward early on in the case?
HAEG: I think she kind of knew in like little round about ways but after the plea agreement fell through nobody ever just came out and just told her this is what I did and that's why I want Mr. – wanted Mr. Cole there to make – from his mouth to make it absolutely certain that that came out. This is why I have some heartburn with Mr. Robinson – he told me that I could never say that we had a plea agreement or that it got broken because he had this – this tactic that it would jeopardize it – well I studied this tactic for 6 months and it disappeared into nothingness when I figured out the last time it had been upheld was 1906.
SHAW: *I was asking you about whether -um- the judge was made aware that you had come forward early on in the investigation?*
HAEG: *I – I don't think so – not directly ever. And I you know could be mistaken about that but not at sentencing. It*

*was just kind of -um- I don't think anybody just told her what I did.*

SHAW: *Ok.*

HAEG: *And that – that not only that I had given up a whole years -um- guiding because this is something else that bugs me is...*

SHAW: *You didn't get credit for that year?*

HAEG: *Yeah because the plea agreement was supposed to happen sometime when my guiding was supposed to start and it kept getting put off but when you cancel big game hunters they can't just swap out so I went through a whole year and lost income and never got a single thing for it. And both my wife and I that's all that we have.*

SHAW: *-Um- before you saw Mr. Cole on -um- November 8th did he lead you to believe that you had a plea agreement as you described?*

HAEG: *Absolutely. In fact I asked him if it could be broken because we were spending so much money to fly people from all the way from Illinois is in and from the bush – chartering planes, taking my kids out of school, taking people away from work, and I wanted to know if it was goanna happen or not. And he said it's a binding agreement.*

SHAW: *And when did you have that conversation?*

HAEG: *(exhales) It would have been I think probably about – and I actually had – well I don't know. I think it was probably a week and a half out or so when we started you know trying to gather people and you know have them commit to things. So it would have been you know I'd say a week or week and a half before – what was it – November 9th so you know whatever – maybe like November 1st.*

SHAW: Were the witnesses' goanna to testify about the moose case?

HAEG: And. Yes the moose case and you know about what we had already done you know to – you know done to – given up a year of guiding, and cooperated, and kind of

something along the lines of -um- you know I have no criminal record – none. Well I got I guess two speeding tickets -um- you know just [char] some character testimony along with the moose thing. But the moose thing was the big thing. I– we were having a full-blown trial on it. In fact at my – you know - I don't know...

SHAW: So you talked to Mr. Cole about what your witnesses would say on the moose...

HAEG: Oh yeah we were all over that. We had transcriptions, I had –uh- questions, I - like I said my wife transcribed the troopers –uh- reports on the moose thing, I actually was goanna fly Mr. Cole out there – look at the moose site. I asked he couldn't make it, I flew out there took videos twice, -um- took still pictures...

SHAW: Mr. Cole talk to you about what your testimony would be at the moose trial?

HAEG: Absolutely – yes.

SHAW: Did he talk to other witnesses about what their testimony would be at the moose trial?

HAEG: Yeah all of them.

SHAW: *And what about -um- evidence you were goanna present at the sentencing on the wolf case -um- did he talk to you about whether you'd make a statement to the judge?*

HAEG: *Yeah I was – I had a well I don't know 30 page statement maybe.*

SHAW: *Did you talk to Mr. Cole about that?*

HAEG: *Yes.*

SHAW: *Were any witnesses goanna testify or make statements at your sentencing on the wolf case?*

HAEG: *Yes.*

SHAW: *And who were they?*

HAEG: *-Um- I believe everybody that was going out. My wife, –uh- Tony Zellers, Jake Jedlicki, Tom Stepnosky, Drew Hilterbrand -um- I think that about covers it.* I have – also bringing my two daughters along but I don't think they were goanna make statements.

SHAW: And -um- did Mr. Cole talk to any of the witnesses that you – about – about the sentencing? Do you know if he did? About what they were goanna say?
HAEG: I believe so actually because we had been -um- he had made a list to get character reference letters so he kind of made a general statement to everybody but also for people that know me and...
SHAW: So were there some character letters too?
HAEG: There was I don't know how many – a lot.
SHAW: And before November 8th when was the last time that you talked to Mr. Cole about the preparations for the hearing in McGrath?
HAEG: (exhales)
SHAW: You talked to him a week before so about the...
HAEG: Yeah it would...
SHAW: ...the arrangements and confirming...
HAEG: Yeah.
SHAW: ...Do you think you had another conversation with him?
HAEG: Trying to think. Don't know – can't – I – I don't know because I know – you know he did go to Dillingham for something but I can't – well don't know – 2 years ago and I don't know.
SHAW: *Did he know, based on your conversation, that some of these witnesses would be coming from outside of Anchorage?*
HAEG: *Absolutely.*
SHAW: And then did you have a -um- a jury trial with Chuck Robinson?
HAEG: Yes.
SHAW: So the legal fees that you paid to him included the trial, investigation, trial, and sentencing – the whole shoot and match?
HAEG: Umm hmm.
SHAW: *Tell me one thing exhibit 7, which is the letter Mr. Cole wrote – it's dated July 6, 2005 in it he describes two of*

*the things that you have been talking about. One of the things he says is that on November 8th he informed you of Mr. Leaders decision to change the terms of the deal and that Mr. Cole says in his letter "later that night I spoke with Mr. Leaders and we further negotiated the terms of a change of plea including limits on the nature and extent of a sixteen month license suspension that would allow you..."*
HAEG: *Yeah.*
SHAW: *...you Mr. Haeg..."to begin guiding on July 1, 2005. Both parties agreed that in light of the new agreement, it was not necessary to fly any of the parties out to McGrath." What do you remember about that?*
HAEG: *I never agreed to it. That's where Brent Cole and Scot Leaders –uh- make decisions about deals that they think I'm goanna agree but a lot of these people were there during those – happened at I don't know a place here and I – the comment came up from Tom Stepnosky and he laid out exactly what I was thinking...*
SHAW: *I want to know what you thought about it.*
HAEG: *Ok.*
SHAW: *I don't want Mr. Stepnosky's thoughts.*
HAEG: *Ok. I thought if I gave them the plane for my same rule 11 agreement – why would they stop with my airplane? And although the – the 16-month license suspension was attractive they could get my plane and then make it a 16-year license suspension. The way I was looking at it. So...*
SHAW: *So Mr. Cole communicated this...*
HAEG: *This new deal and I said...*
SHAW: *...new proposal offer to you and you said no.*
HAEG: *I said no, yes.*
SHAW: Ok and -um- did it involve jail time?
HAEG: I believe so – I don't – I don't know. I'd – the...
SHAW: The crystal things to you were the plane and the guide...
HAEG: Yeah jail time...
SHAW: ...guide license...

HAEG: ...to me was (makes exhale sound) whoopee do. *I can go serve jail but if I don't have the tools to make my living that hurts.*
SHAW: Ok. All right you can call your witness in. I'm sorry to have interrupted your flow here.

Witness - Tony Zellers 4/12/06

SHAW: Before you testify I need to swear you as a witness. Can you raise your right hand? Can you swear or affirm that you will the truth the whole truth and nothing but the truth in this fee arbitration proceeding?
ZELLERS: I do.
SHAW: All right – thank you. Can I ask your name?
ZELLERS: My name is Tony Zellers.
HAEG: Ok and what do you think about me and my family?
ZELLERS: You're very professional and your families a good family. Everything I've seen about you is on the up and up.
HAEG: *Did you fly from Illinois to Anchorage the afternoon of November 8th 2004 to meet with Mr. Haeg's attorney Brent Cole -uh- oh and in regard to a Rule 11 Agreement?*
ZELLERS: *Yes I did.*
HAEG: Do you know if Brent Cole knew you were doing this?
ZELLERS: To my knowledge he knew because I was going to be one of the witnesses to -uh- testify at the McGrath hearing.
HAEG: Ok. -Um- ok and I guess that takes care of my next one. *Was this with the intention of flying to McGrath 8:00 am November 9th to execute the Rule 11 Agreement between Mr. Haeg and Mr. Leaders?*
ZELLERS: *Yes.*
HAEG: *Did you ever go to McGrath?*
ZELLERS: *No.*

HAEG: *...happened instead of the Rule 11 Agreement?*
ZELLERS: *We went to -uh- Brent Cole's office where we had the teleconference with the judge that day for our arraignment proceeding.*
HAEG: *Ok. At that time did Brent Cole ever even try to inform the judge about the Rule 11 Agreement that we – that you had come to Anchorage from Illinois for?*
ZELLERS: *No.*
HAEG: *-Um- if Brent Cole had not had me give my statement to the prosecution would you have ever done so?*
ZELLERS: *No.*
HAEG: -Um- did you testify at my sentencing after I had went to trial – did you testify at my sentencing in McGrath after my trial?
ZELLERS: Yes I did.
HAEG: *Did I – before we flew out there did I demand Brent Cole be in McGrath for – for testifying at my sentencing?*
ZELLERS: *You told me you had subpoenaed him for your sentencing – or trial one of the two...*
HAEG: *Ok. As we got on the plane was that still my position that I wanted him out there?*
ZELLERS: *Yes to my knowledge.*
HAEG: *Ok. Did Brent Cole ever testify at my sentencing?*
ZELLERS: *No he did not.*
HAEG: Did I – you were – we were all sitting pretty close together did I ever tell my attorney to let Brent Cole off the hook so he didn't have to testify?
ZELLERS: Not that I heard.
HAEG: What affect to date has had – had – has all this had on me and my family?
ZELLERS: Well besides the big monetary drain on the – on your family and stuff -um- your business is - basing your reputation in the business has – has gone down, your business is basically shot for right now, -um- you haven't guided for – for the one year -um- for that -um- the stress levels on your family have been out the roof and I know

your – your two daughters have been feeling the stress and stuff also when you're under stress.
HAEG: *Was your guide license suspension retroactive?*
ZELLERS: *Yes it was.* My guide license was retroactive to July 1st 2004. My -uh- change of plea hearing was in January – January 11th 2005.
SHAW: Ok – Mr. Cole...
COLE: I guess my question was did you – *did you think that you had any defenses to the – the charges that were being discussed between you and your attorney?*
ZELLERS: *-Uh- yeah. -Um- the – the mere fact that the State was – they had -uh- -um- you know they had 4 of the 9 wolves locations -um- kill sites. They didn't have them all. -Um- and we were you know at that time I mean we weren't charged with anything. That was the whole thing. Is we weren't charged with anything before our interview with the State.*
COLE: *You were scheduled to be arraigned on the 9th also.*
ZELLERS: *Correct.*
COLE: *Right? So you were goanna have to be present one way or the other at that hearing?*
ZELLERS: *But -uh- I was goanna have to be present yes. But I could do it telephonically for the arraignment. -Um- I was brought back at the request of Mr. Haeg because of the – the moose issue that we were goanna go testify out at – to at McGrath.* And this – I'm coming back off of vacation so I was visiting family in Illinois on vacation.
COLE: That's all the questions I have.
SHAW: Ok. Anyone have questions?
METZGER: Do you – *in November of 2004 were did you live?*
ZELLERS: *I lived at Eagle River at my current residence.*
METZGER: *You say you were back visiting family in Illinois and you came back from a vacation.*
ZELLERS: *Correct.*
METZGER: *To your residence - to testify in McGrath?*

ZELLERS: *Right I'd and then I went – then I flew back to Illinois after -uh- I was only here for approximately 3 days before I – I went back to Illinois.*
METZGER: Do you have any formal legal training?
ZELLERS: -Uh- no I don't.
METZGER: So is it your perception at this point that your decision to – *at some point you decided if I understand it right you coo[perated] – you decided to cooperate with the law enforcement authorities. Is that right?*
ZELLERS: *Based in the fact that Mr. Haeg had already cooperated with the law enforcement* and from advice from my attorney and stuff I was basically left – left out or I felt like I had to cooperate also or otherwise I would be deemed as - as not cooperating obviously.

Witness - Tom Stepnosky 4/12/06

SHAW: Are we on record?
JOHNSON: We're on record now.
SHAW: Ok. I need to swear you as a witness.
STEPNOSKY: Ok.
SHAW: Would you raise your right hand? Do you solemnly swear or affirm to tell the truth the whole truth in this fee arbitration proceeding?
STEPNOSKY: Yes I do.
SHAW: Thank you. What's your name?
STEPNOSKY: Thomas J. Stepnosky. S T E P N O S K Y
SHAW: All right – thank you. Mr. Haeg?
HAEG: Ok. And what do you think of me and my family?
STEPNOSKY: -Uh- very high regards for both you and Jackie. Very honest hard working people.
HAEG: Ok. -Um- what have we been through since this case started? My family and I?
STEPNOSKY: -Uh- from what I've seen it has turned your life completely upside down. It's -uh- I wouldn't even call it

a life. It's a point where you are just existing around all of this that has gone on through the...

HAEG: Ok -um- as far as you remember do you – did you attend every meeting that I had with Brent Cole other then the first one that my wife attended and -um- not phone but personal meetings?

STEPNOSKY: I believe I was there for every meeting except for I believe when you first hired Brent or something like that. But after that I attended everyone.

HAEG: Ok -um- as far as you can see did Brent Cole refuse to investigate the case with me?

STEPNOSKY: -Um- discussion I've seen a lot of discussion but actually in a investigating things I – I've never seen any of that.

HAEG: Ok -um- *did Brent Cole say that the falsification of the search warrants didn't matter?*

STEPNOSKY: *I believe that I heard that. That it would be just a blip on the screen and wouldn't have any bearing on the case.*

HAEG: *Ok -um- did Brent Cole recommend that I give the State a map and truthful interview before getting anything nailed down in writing with the State?*

STEPNOSKY: *Yes I was there for that. And -uh- more or less said tell them everything that you know and they'll be nice to yah.*

HAEG: Ok -um- and I think that we already covered that one -uh- here. Did I ever agree to any other Rule 11 Agreement then the one -uh- Brent Cole failed to even try to uphold and on November 9th 2004?

STEPNOSKY: To the best of my knowledge that's the only one that I know of.

HAEG: Ok -um- *did you drive up to Anchorage on November 8th 2004 to meet with Mr. Haeg's attorney and discuss tactics – sentencing tactics for the following day?*

STEPNOSKY: *Yes I did.*

HAEG: *-Uh- did Brent Cole after we arrived in Anchorage on November 8th 2004 tell you quote "I just received very bad news – I just received very bad news" unquote and then showed you a fax he had received just 2 hours before changing the charges I was supposed to plead to - to much harsher ones?*
STEPNOSKY: *Yes I was there – we were sitting in the outer office – all of us -uh- Drew, Jackie, me, you and he came down with that in his hand – made that statement.*
HAEG: *Ok. When I kept asking Brent Cole that I wanted the Rule 11 Agreement enforced did Brent Cole tell me in front of you quote "I can't do anything because I have to work with these people in the future"?*
STEPNOSKY: *Yes I've heard – I've heard that more then once.*
HAEG: *Ok. What did Brent – what was the only thing Brent Cole said he could do?*
STEPNOSKY: *-Uh- he said the only thing he could do was to -uh- call Mr. Leaders boss and I believe she was a woman and have a discussion with her.*
HAEG: *As far as you know did Brent Cole ever do that?*
STEPNOSKY: *-Um- I remember you questioning him at a – as to whether he had spoken to her and the only thing I have a recollection him saying was that he had called and left a message and that was the extent of it.*
HAEG: Ok.
STEPNOSKY: *Hadn't heard back from her.*
HAEG: *Did you just hear that – that me asking that once or was it multiple times?*
STEPNOSKY: *-Um- more then once, yes.*
HAEG: *Did I demand Brent Cole be in McGrath to testify at my sentencing?*
STEPNOSKY: *Yes you did.*
HAEG: *Was I adamant about that?*
STEPNOSKY: *Very adamant to Mr. Robinson, yes.*
HAEG: *Did Brent Cole ever testify at my sentencing?*

STEPNOSKY: *No he did not.*
HAEG: -Um- did you see the letter Brent Cole wrote stating he knew that the Rule 11 Agreement was going to be broken 4 or 5 days ahead of when he told us he had found out it was going to be broken?
STEPNOSKY: Yes I did read that letter.
HAEG: Ok I – I'm just trying to see if I can wiggle around stuff because from what I've seen lawyers are good at it. -Um- what did Brent Cole say to – or *did Brent Cole ever try to enforce the Rule 11 Agreement that was supposed to happen on – there it was – November 9th 2004?*
STEPNOSKY: *Not to my knowledge, no.*
HAEG: *Were you present at the arraignment that happened instead of that?*
STEPNOSKY: *Yes I was.*
HAEG: *Ok. -Um- -um- did Brent – why did Brent Cole – or what reason did Brent Cole tell us for not trying to uphold the Rule 11 Agreement?*
STEPNOSKY: *-Uh- he at that time and other times I heard him say that he had to – after you were gone – after your case was gone he still had to deal with - with the State. So he couldn't more or less rock the boat - rattle their cage too much.*
HAEG: *Did Brent Cole ever state quote "I can't piss Leaders off because I still have to deal with him after your case is done"?*
STEPNOSKY: *Yeah basically just about what I just said.*
HAEG: *Ok. -Um- did you ask after the Rule 11 Agreement was not enforced did you ask Brent Cole what is to stop Prosecutor Leaders from asking for more if I give them my airplane just to get the same deal I'd already paid for?*
STEPNOSKY: *Yes I asked that question at one time.*
HAEG: ...trying to do the best I can here. -Um- ok I guess that's -um- let me see here. I think that's about it.
SHAW: Mr. Cole.

COLE: *Did you discuss with David his – the decision to cooperate and give a statement prior to the interview happening?*
STEPNOSKY: *–Uh- I believe I did, yes.*
COLE: *Did I explain to you what the benefits were, I believed, if he gave a statement?*
STEPNOSKY: *I believe that –uh- to the best of my recollection that you said you should just tell them everything and they'll – you'll have a better shot of it down the road or and easier chance. That's the only thing I remember you saying about it.*
COLE: Do you remember us discussing how I was concerned that if he didn't cooperate that the State would – um- could charge him and make an example out of him?
STEPNOSKY: I believe you brought that up, yes.
COLE: *Did you have concerns of what would happen – well let me ask you this - did you agree with Mr. Haeg's decision to cooperate and give a statement to the –uh- law enforcement at the time?*
STEPNOSKY: *–Um- I – I can only say – I guess you would say I – I - I went along with it but my feeling was that you were goanna get something out of it and – and to me as we went down the road it didn't seem like anything came out of it. You know that – my understanding of – of - of – of – of what you said you know "be nice to them maybe they will be nicer down the road" it only seemed to get worse so you know to me it was a complete loss. I mean it opened up avenues that I believe led to more charges against him.* So I you know truthfully I don't think it was a – a - a good decision at all.
COLE: At the end - afterwards. But at the time – my question was at the time did you have – did you agree with the decision?
STEPNOSKY: –Uh- I was like this – but my - my recollection was that you know from what you said you would be able to get a – a - a good – a good - come to a good

agreement with dealing with the State by doing this you know – you know – you know hindsight yeah – it was a - hindsight looking at it now holy jeez I no I would - I would zip my lip and (makes a blowing sound).
COLE: Never say anything?
STEPNOSKY: No way.
COLE: *What was your understanding of what the agreement was on November 8th, before you came to my office?*
STEPNOSKY: *–Uh- that Dave would go out to McGrath and have a open sentencing hearing.*
COLE: *On what?*
STEPNOSKY: *As far as I knew on the –uh- plane and I don't recollect the specific - all the charges that were in place at that time.*
COLE: *So the – but you'll agree there was about 11 charges that – that you – that you were aware of?*
STEPNOSKY: *If 11 was the number I'd - if I'd seen it again I'd agreed to that, yes.*
COLE: Do you remember when we sat in the conference room – the 6 of us together there – that evening?
STEPNOSKY: Yes.
COLE: To discuss this? And do you remember me taking out a –um- having a - a list where I sat down and talked about all of David's legal options in his case?
STEPNOSKY: That same night?
COLE: Yes.
STEPNOSKY: November 8th?
COLE: Yes that night.
STEPNOSKY: I – I know I was there I – I cannot recollect exactly what these options were. You know if you were to mention them I might – there's a possibility could recollect.
COLE: *Do you remember going through and talking about filing a Motion, what it would entail to file a Motion to require the State to - to go back and charge David under it's original information?*

STEPNOSKY: *No I don't recall that.*
COLE: Do you remember going through –um- the different deals that were on the table that David had to choose from at that time?
STEPNOSKY: I wasn't aware of any deals that were on the table except the - you know -us coming up there to go out to this open sentencing hearing and testify. I'd – I'd never seen anything -uh- throughout the course of all the meetings where anything was –uh- given to us that I know of letting us know where we stood from Mr. Leaders.
COLE: Do you recall Mr. Leaders calling us in our office that night?
STEPNOSKY: Mr. Leaders calling your office that night?
COLE: Umm hmm.
STEPNOSKY: –Uh- no I do not.
COLE: Do you recall me discussing a new option where by David would get his license back in July of 2005 and that we had a structured deal subject to approval by the Department of Occupational Licensing?
STEPNOSKY: I remember that came up yes. I –uh- I'm not so – I - I remember July of 05 but as far as the Department of Licensing I don't recall that part.
COLE: Thank you. You indicated that –uh- at - you recall Mr. Haeg telling me that there was a falsification in the affidavit –um- that was prepared by Trooper Gibbens - Gibbens, I believe, is that your testimony?
STEPNOSKY: Say it again.
COLE: *I think you indicated earlier that you recalled Mr. Haeg asking or telling me that he was aware of perjured testimony in Trooper Gibbens affidavit, do you recall that?*
STEPNOSKY: *That's –uh- that I recall being brought up that it wasn't being sworn too? –Um- I'm not so sure – falsification.*
COLE: *–Um- do you remember a discussion – do you remember me discussing it at all with Mr. Haeg?*
STEPNOSKY: *Yes I remember him bringing it up to you –*

*um- I don't remember what the outcome was of it.*
COLE: *Ok. Do you remember –uh- that you talked about this statement that I – that I – that you say I made about not wanting to rock the boat with Mr. Leaders. Do you remember that?*
STEPNOSKY: *Yes.*
COLE: *And that was done in the context of discussing what it would take to enforce a Rule 11. Do you remember us taking about that?*
STEPNOSKY: *Yes I believe that's true.*
COLE: *And do you remember me telling Mr. Haeg that in order to enforce a – first of all do you remember me saying I wasn't sure – or no I guess it's your testimony that I said it was a ruling. Do you remember me telling you what it would take to enforce a Rule 11 Agreement?*
STEPNOSKY: *No I don't recall that.*
COLE: *Do you remember me saying that it would take cross-examining Mr. Leaders, and calling him as a witness?*
STEPNOSKY: *No I do not recall that.*
COLE: *Do you remember me telling you that I didn't think that it would accomplish what you wanted to accomplish? Or Mr. Haeg I should say – that Mr. Haeg – I was – remember me telling Mr. Haeg that filing this Motion would not accomplish what he wanted to accomplish?*
STEPNOSKY: *–Uh- no I – I - I don't think so – to my recollection his idea was to go out and have the open sentencing I mean that - that was it. So if that could be accomplished, and that's what he wanted, if that would do it, then that would work for him.*
COLE: *Do you remember me telling him that - that could be filed, that Motion?*
STEPNOSKY: *No.*
COLE: *Do you remember me telling that it was goanna cost money to file that Motion?*
STEPNOSKY: *No I do not.*
COLE: *Do you remember me telling you that we would still*

*have to deal with Mr. Leaders at an open sentencing and he would still be doing the recommending of the sentence if we were successful and were able to enforce a Rule 11 Agreement?*
STEPNOSKY*: Do not recall that, no.*
COLE: That's all the questions I have.
HAEG: Ok.
SHAW: Mr. Haeg do you have anymore questions you want to ask?
HAEG: Ok. Again there was deals and did you – but *you stated to Mr. Cole that the deals that he had going all – did they all include me giving up the PA12 – the deals that he was talking about after the deal fell through – did they all include giving up the airplane?*
STEPNOSKY*: Yes.*
HAEG*: Ok. And then did you – this is where it's kind of a little repetitious but you made the comment that –um- if we gave up the plane and it was gone the Rule Agreement could always be changed again and they could ask for something else. Did you make that – it aint the exact words you used - but did you make that statement?*
STEPNOSKY*: Yes.*
HAEG*: I asked Mr. Cole if there was anyway we could enforce the Rule 11 Agreement, correct?*
STEPNOSKY*: Yes.*
HAEG*: And what was the only thing that Mr. Cole told us we could do, the only thing?*
STEPNOSKY*: To my recollection the only thing I heard was for him to call Mr. Leaders boss.*
HAEG: Ok and how many times did I ask if he had done so?
STEPNOSKY: Numerous times.

SHAW: Lets put you under oath. Could you raise your right hand? Do you swear or affirm that you will tell us the truth the whole truth and nothing but the truth in this fee arbitration proceeding?
HILTERBRAND: I will.
SHAW: Thank you. What's your name?
HILTERBRAND: Drew Hilterbrand.
SHAW: Hilterbrand?
HILTERBRAND: Yes.
SHAW: All right thank you. Go ahead Mr. Haeg.
HAEG: Ok. What have you seen happen to me and myself –uh- since this case started?
HILTERBRAND: I've seen you undergo a great deal of emotional stress – as well as mental stress and as a result your physical – physical health has deteriorated somewhat.
HAEG: *Did you take time off work, fly on a charter flight from Silver Salmon creek, and drive up to Anchorage on November 8th 2004 to testify at a rule 11 agreement that was going to happen on November – the next day at November 9th 2004?*
HILTERBRAND: *Yes I did.*
HAEG: *Ok. -Um- after we arrived in Anchorage did Brent Cole meet us at his office and tell us quote I had just received very bad news unquote?*
HILTERBRAND: *Yes he did.*
HAEG: *Did he then show us a fax...*
SHAW: *Excuse me Mr. Haeg from now on why don't you just ask him what happened.*
HAEG: *Ok. Sorry. -Um- what did he show us to – or did he show us anything that – I don't know how to do this anymore...*
SHAW: *Did he show us anything?*
HAEG: *Did he show us...*
METZGER: *That's a complete question.*

HAEG: *Ok did he show us anything?*
HILTERBRAND: *He had a piece of paper in – in his hand – uh- said it was a fax he had just received -um- from Leaders office and in regards to the rule 11 agreement.*
HAEG: *And can I ask did these – did this fax change the charges to much harsher ones? Is that a good question or not?*
COLE: *I think it's been asked and it speaks for itself.*
HAEG: *Ok.*
SHAW: *-Um- -um- Mr. Hilterbrand what did you understand this meant for Mr. Haeg?*
HILTERBRAND: *–Uh- apparently it – it –uh- wasn't the original agreement -um- it had changed the charges with my understanding -um- that Leaders had -um- changed the charges.*
HAEG: *Were these charges...*
SHAW: *(laughs) the vacuum cleaner...*
HAEG: *...harsher or were these charges harsher then the original ones? Is that a...*
HILTERBRAND: *–Uh- yeah that's what I was told – yeah.*
HAEG: *Ok.*
HILTERBRAND: *That was my understanding.*
HAEG: *-Um- during the arraignment that happened the next day instead of the rule 11 agreement did Brent Cole at ever – any time even try to enforce the rule – the – the rule 11 agreement?*
HILTERBRAND: *-Um- no. He stated when the – Leaders – uh- mentioned the new charges –uh- he stated that they weren't the charges agreed to but other then that -um- I don't recall him making any objections.*
HAEG: *Ok -um- when I kept – what did Brent Cole say to all of us when I kept in – insisting that the rule 11 agreement be enforced?*
HILTERBRAND: *-Um- said that about all he could do was go talk to Leaders boss.*
HAEG: Ok. Did he say anything about working with the

people that were involved in the rule 11 agreement?
HILTERBRAND: -Um- later –uh- while instead of the -um- on the evening of the 8th -um- in that evening he – when we were meeting elsewhere besides his office -um- he mentioned that he had been worked with Leaders and or worked with these people in the future.
HAEG: Ok. *Did he ever tell me that there was any other way then what you'd said about calling her [his] boss – any other way that we could enforce that rule 11 agreement?*
HILTERBRAND: *-Um- I don't believe so.*
HAEG: *Did you see a letter that Brent Cole wrote to me stating that the rule 11 agreement – that he knew the rule 11 agreement was going to be broken 4 or 5 days before he told us he had just received bad news?*
HILTERBRAND: *Yeah.*
COLE: Do you remember how long we met in the office on November 8th?
HILTERBRAND: On the 8th –uh- I think we were there for 2 – 3 hours maybe but I wasn't keeping track.
COLE: At that time what was your understanding with what was going to happen?
HILTERBRAND: -Um- that –uh- we'd go you know –uh- do the teleconference the following morning and -um- and talk to Magistrate Murphy or –uh- regarding the -um- charges.
COLE: *Do you remember why weren't flying out to McGrath the next morning?*
HILTERBRAND: *-Um- all the details I don't know. All I know is again regarding the facts you know that the charge – harsher charges had been – or were goanna be raised and -um- that –uh- because of that it wasn't necessary for us to go.* But a lot of the stuff in the meantime – the details escape me or I wasn't there for some of the meetings.
COLE: You don't remember sitting down and discussing at the table the terms of the agreement that was reached after Mr. Leaders called us that night?

HILTERBRAND: I know we did discuss –uh- some terms but all the details like I say I don't remember.
COLE: Do you remember a discussion of all of Mr. Haeg's legal options at that point?
HILTERBRAND: I remember some of them – I don't remember all of them.
COLE: That's all the questions I have.
SHAW: (...) Mr. Haeg...
HAEG: Just a clarification. -Um- it's hard to do this -um- did I ever agree to anything in your entire knowledge of being together – *did I ever agree to any other rule 11 agreement then the one we drove to Anchorage to – to finalize?*
HILTERBRAND: *To my knowledge no.*
HAEG: *Did I ever agree to give up my PA12 airplane?*
HILTERBRAND: *No as I recall you requested any other options being explored so where you could – you would be able to keep it.*
HAEG: *Yep. Ok that's it.*

Witness - Jackie Haeg 4/12/06

SHAW: Lets swear you as a witness. Could you raise your right hand? Do you swear or affirm that you will tell the truth the whole truth and nothing but the truth in this fee arbitration proceeding?
JACKIE HAEG: Yes I do.
SHAW: Thanks. Tell us your name.
JACKIE HAEG: Jackie Haeg.
SHAW: Go ahead.
HAEG: Ok. What have we been through physically, emotionally, mentally and financially since all this started?
JACKIE HAEG: Just -um- I've – a lot of stress, -um- worrying about money and going through a lot of money -um- just emotions and –uh- just been really hard.
HAEG: -Um- did – were you –uh- *I guess in your opinion*

*did Brent Cole advise me to give the State every defense and weapon that we had without any deal whatsoever?*
JACKIE HAEG*: Yes it seems that way.*
HAEG*: –Uh- is this what I did?*
JACKIE HAEG*: Yes it is.*
HAEG: And did I discuss with you as we were making these decisions – did you have a hand in them?
JACKIE HAEG: We talked about them yes and...
HAEG: Ok -um- *did I ever bring up a concern of Brent Cole's refusal to investigate my case?*
JACKIE HAEG*: Yeah you said every time that you talked about going over the case and you know kind you know brushed off - said it was not important.*
HAEG: -Um- did I ever or in our – *did I run by you every single agreement that was on the table just to get us out of this nightmare?*
JACKIE HAEG*: Well there was only the one agreement.*
HAEG*: Ok – ok and did I ever agree to any other rule 11 agreement then the one we had that we were suppose to finalize on November 9th 2004?*
JACKIE HAEG*: No.*
HAEG*: Did Brent Cole ever stand up for us against the State?*
JACKIE HAEG*: Not that I'm aware of – no.*
HAEG*: Did Brent Cole after we arrived in Anchorage on November 8th 2004 tell all of us – or what did he tell us?*
JACKIE HAEG*: He came in the office and he told us that he had just received very bad news from Scot Leaders.*
HAEG*: And how did he show us the bad news?*
JACKIE HAEG*: He was holding a fax that he had just received from Mr. Leaders.*
HAEG*: Ok what – did I keep –uh- did I keep demanding Brent Cole to enforce the rule 11 agreement?*
JACKIE HAEG*: Yeah.*
HAEG*: And what did he tell all of us?*
JACKIE HAEG*: He told us that the only thing that he could*

*do would be to talk to –uh- Mr. Leaders boss.*
HAEG: *Ok and did he tell us that there was anything else he could do? Anything whatsoever?*
JACKIE HAEG: *No.*
HAEG: *Ok. -Um- how much money did we spend on the rule 11 agreement - and I guess from the time we started negotiating with the State – with me giving my statement – from then on what did it cost us?*
JACKIE HAEG: *We gave up a years salary which would have grossed around I'd say six – about six hundred thousand dollars and then when we flew people in, made travel arrangements, hotel arrangements, to get everybody out to McGrath that was about six thousand dollars and I think then – and I - I don't know if this is – I don't know if you want to know about the additional attorney fees – we've had about another forty thousand dollars in attorney fees.*
HAEG: *That's beyond when the rule 11 agreement would have taken place?*
JACKIE HAEG: *Yes that's beyond that.*
HAEG: *Ok. -Um- do you think I would have been better off not hiring Mr. Cole?*
JACKIE HAEG: *Yes - I do.*
HAEG: *Do you think we would have had to deal with as many charges?*
JACKIE HAEG: *No because you wouldn't have given your statement to the State.*
HAEG: *-Um- did I demand Brent Cole be in McGrath to testify at my sentencing?*
JACKIE HAEG: *Yes you did.*
HAEG: *-Um- how do you know that?*
JACKIE HAEG: *Because you asked Mr. Robinson to subpoena him and you...*
HAEG: *Ok.*
JACKIE HAEG: *...said it over and over that you wanted him there.*
HAEG: *Yep I was pretty insistent about that wasn't I?*

JACKIE HAEG: *Yes you were.*
HAEG: *Did I go as far as to buy - or did I have you buy airline tickets for Mr. Cole?*
JACKIE HAEG: *Yes I purchased airlines for him and then I sent them to him via email.*
HAEG: *Ok and did you buy or reserve a hotel room for Mr. Cole in McGrath?*
JACKIE HAEG: *I reserved hotel rooms for everybody that was going to McGrath – yes.*
HAEG: *Did that include Mr. Cole?*
JACKIE HAEG: *Yes.*
HAEG: *Did Brent Cole ever testify at the sentencing?*
JACKIE HAEG: *No.*
HAEG: *-Um- Did you ever see a letter Brent Cole wrote me stating that he knew before he told us he'd just found out he knew for 4 or 5 days before that the rule 11 agreement would be broken?*
JACKIE HAEG: Yes I saw that letter.
HAEG: Ok. Did – in the more I learned about the case did I see that – oh and there's another question -um- I guess I need to ask. The first one – I don't know there was a bunch of stuff I was goanna ask you but -um- what – did you attend the first meeting that I ever had with Brent Cole?
JACKIE HAEG: Yes I did.
HAEG: Ok. What did Brent Cole say to us about my case?
JACKIE HAEG: That it was goanna be a big case and that before it snowballed out of control we would have to deal with it right away – pretty much is what he said.
HAEG: Ok. Did he mention – did he mention that the governor may have been contacted?
JACKIE HAEG: Yeah he said that the -um- that the assistant district attorney may have contacted the governor – probably already had contacted the governor regarding it.
HAEG: Did he say anything about press coverage?
JACKIE HAEG: Yeah he said that he thought it was goanna be in the press and that there was the possibility

that when we got home that they might be at our house or you know show up at the end of the driveway.
HAEG: That's - you know I agree. -Um- I guess what – what – did – did Mr. Cole have any material to – what material did Mr. Cole have to paint such a gloomy picture for us? Is that a good question?
SHAW: You could certainly ask it...
HAEG: Ok.
SHAW: *...what materials were available during that first discussion.*
HAEG: *Ok.*
JACKIE HAEG: *I believe the only thing that we had was copies of the search warrants that they left at our house.*
HAEG: *Ok and just with that did I find any defects in that?*
JACKIE HAEG: *Yes you found that they were stating that the wolves were taken in the same unit as our lodge was when - that the wolves that they had found were in the same unit as our lodge.*
HAEG: *Ok. So with just a little bit of evidence I was already attacking – is that fair to say?*
JACKIE HAEG: *Yes.*
COLE: Do you remember when we were in the office – in the conference room and Mr. Leaders called and all of us were around the table?
JACKIE HAEG: No I don't remember Mr. Leaders calling when I was in the office.
COLE: Do you remember me coming back in and talking about a deal that would get David back his guide license in August or July of 2005?
JACKIE HAEG: I remember you came into the – there was a restaurant by your office and I believe that you came down there and told us about some other thing that Leaders said could happen.
COLE: *When we went down for dinner had we made a decision about whether or not to go to McGrath or not?*
JACKIE HAEG: *I believe we decided not to go to McGrath*

*because the deal had been broken and that there was no reason to go to McGrath.*

COLE: So you don't remember –uh- do you remember a deal being presented which required the Division of Occupational Licensing to approve it?

JACKIE HAEG: No.

COLE: Do you remember we all had dinner together that evening?

JACKIE HAEG: I remember we were – yes.

COLE: And do you remember David or yourself – *did either of you express any dissatisfaction with me that evening when we were having dinner and drinks?*

JACKIE HAEG: *I think we were upset about the deal not going through and you know like we were shocked you know we thought we were going out to McGrath and we spent all the time you know getting everybody ready to go and come up there and then it just fell through and I know he was very upset and I was upset too.*

COLE: *Did you – did you drive home to Soldotna then that day?*

JACKIE HAEG: *That day – yes.*

COLE: *Did –uh- Mr. Haeg express to you that he was dissatisfied with my services when you drove home?*

JACKIE HAEG: *He was upset with everything that had happened – yes – he wasn't happy.*

COLE: *I guess my question was – was - did he express to you that he was dissatisfied with my services at that point?*

JACKIE HAEG: *Yes he – he didn't understand why you know something wasn't done to make the deal happen and you know it – so yes I – I believe that he was – he did tell me that yes.*

COLE: *Did you encourage him to get another attorney to represent him – in his court case?*

JACKIE HAEG: *We discussed it – he was extremely upset with what had happened – he didn't feel like you had done your job and he started you know he wanted to get another*

*opinion and then - and I agreed with him that it would be good to do so.*

COLE: That's –uh- that's all the questions I have.

SHAW: Mr. Haeg?

HAEG: Ok. What positive thing – and can you – *what positive things can you name that Brent Cole ever did for us?*

JACKIE HAEG: *I can't name anything that ever happened - positive.*

HAEG: -Um- how strong were the facts at our first meeting – or how many facts did we have and how strong could they be to make a decision on which way we should go with my case at our first meeting with Brent Cole?

JACKIE HAEG: We...

HAEG: In other words how many facts did we have and how strong?

JACKIE HAEG: All that we had was the search warrants and we didn't know anything at that point.

HAEG: Ok. In your opinion do you thinks it's reasonable to make the [de] - the tactical decision at that moment before going over the case in detail when we had more facts?

JACKIE HAEG: No.

Witness Wendell Jones 4/13/06

SHAW: All right this the -um- this is the fee arbitration hearing -um- that was convened by the Alaska Bar Association Fee Arbitration Committee –uh- David Haeg is the –uh- petitioner, Brent Cole is the attorney respondent, the case number 2006F007, my name is Nancy Shaw I am the chair of the fee arbitration panel. With me are Robyn Johnson and Yale Metzger the members of the panel. Mr. Haeg is present – Mr. Cole is present. Today is April 13th 2006 and we are continuing our hearing from yesterday April 12th. -Um- as we left it Mr. Haeg had one more

witness to call or most likely one more witness to call. So we will continue the petitioner's case. -Um- Mrs. Haeg who has previously testified is now present in the room and she'll be permitted to stay throughout the hearing if she wishes to do so. And -um- Mr. Haeg you can call your fist witness.
JONES: Wendell Jones – W E N D E L L middle initial L.
SHAW: All right thank you. Go ahead Mr. Haeg.
HAEG: Ok. -Um- as a former Alaska State Trooper what is the significance of a search warrant being based on false information?
COLE: Objection.
JONES: A search warrant being based on false information?
SHAW: You need to –uh-
HAEG: Oh.
SHAW: ...wait just a minute Mr. Jones.
COLE: Lack of...
SHAW: What's your objection?
COLE: Lack of foundation.
SHAW: So I infer from what you said that he was a State Trooper but we don't know that. I wonder if you could...
HAEG: Ok.
SHAW: ...just ask him his background.
HAEG: -Um-
JONES: I'm raising up my volume so...
SHAW: Ok.
JONES: (laughs) ...I can't hear. I'm sorry.
SHAW: Ok.
HAEG: -Um- –uh- Mr. Jones did you used to be a Alaska State Trooper?
JONES: Yes I did.
HAEG: Ok and for how many years?
JONES: Four years back in the seventies.
HAEG: Ok *have you read the search warrant affidavit?*
JONES: *Yes I have.*

HAEG: *Ok and do you have an opinion about it?*
JONES: *Yes I do. A – a search warrant has to be based on legal facts because if – if you interject things in the affidavit that are not true then the affidavit is false. That would be my opinion.*
HAEG: Did you - god how can I say this -um- *did you hear testimony or see transcriptions of testimony that showed that affidavit was false?*
JONES: *Yes I did. The –uh- Trooper Gibbens had stated in the –uh- in the affidavit that –uh- Trophy Lake Lodge, which was owned by the Haeg family, was in area 19C and he said that the wolves he was investigating the kill of were in 19C. And he supplied GPS coordinates for the area that those wolves were at and he – he had stated 19C when in fact the area that those wolves were is 19 game – Game Management Unit 19D and I'll stop there.*
HAEG: *Ok. -Um- were there any other Game Management Units closer to the wolf investigation sites then Unit 19C?*
JONES: *Yes – yes – Unit 19A and B are both closer then 19C to the area where those wolves were shot that were in 19D.*
HAEG: Ok. -Um- –uh- gosh – if an affidavit is – has false information how – how do you get the – or what else needs to be wrong with it for the evidence, that is found with that affidavit, to be thrown out?
COLE: Again my objection is lack of foundation.
HAEG: Ok.
COLE: He's not an attorney. This is a – a legal issue.
SHAW: I understand. Go ahead.
HAEG: -Um- just because there's false information on the affidavit doesn't mean the evidence obtained from that affidavit is inadmissible, is that correct?
JONES: Yes it does have to be true for it to be correct.
HAEG: Ok. -Um-
JONES: The foundation?

HAEG: Well if -um- maybe I'm goanna put words in his mouth but -um- *is it true that generally speaking there has to be a finding of bad faith before evidence is thrown out because of false information on a search warrant?*
JONES: *Well yes that's true but that was evident in the trial. After I believe it was in rule 11 –uh- this information that –uh- I read where –uh- it was pointed out to Trooper Gibbens that the -um- the area in question where he was investigating those particular wolves were killed in 19D and that was pointed out by both you and Mr. Zellers –uh- by utilizing his own GPS figures to show him on the map. And in the sentencing or in the –uh- trial itself Trooper Gibbens again uses 19C as where those wolves were that were being investigated when it had been pointed out that it was in error and that would be foundation.*
HAEG: *Ok -um- (exhales) and this is – I don't know if he's an expert so I don't know how to do this. -Um- I guess in your own experience or so I guess not testifying as an expert but as your own – in your own experience as a Trooper what are the advantages –uh- for a defendant to have a search warrant affidavit found to be based on false information due to bad faith?*
JONES: *Well that's an easy one. If that was the case the – the evidence –uh- would all go away. That would not be – that would not stand.*
HAEG: Ok and in my case -um- I guess have you read a lot or all of the information regard to my case?
JONES: If I haven't I wouldn't know what it would be. I've read about everything in it – yes.
HAEG: Ok. So what kind of case would the State have if all the evidence from – that was obtained through the false affidavit were – were not admissible? What kind of – I guess what - what ba – what would the State have left?
JONES: (exhales) Well I'm not an expert so I don't know...
HAEG: Ok so I guess in your own you know just looking at it if everything...

JONES: Well if that was thrown out then –uh- the basis for any –uh- any investigation would have gone away because the evidence would be gone because the evidence goes away if the search warrant goes away.
HAEG: Ok -um- and I guess maybe what you meant to say is there wouldn't be probable cause – or in your opinion would there be probable cause to file charges without the evidence obtained through the search warrant?
JONES: Well again it'd have – it'd just have to be my opinion but –uh- unless there was other evidence that was available that would be my opinion.
HAEG: Ok.
JONES: That would go.
HAEG: Ok what - in your opinion - *what are the disadvantages to challenging the validity of a search warrant affidavit for the defendant?*
JONES: *Well there would be none. It would be to your advantage to challenge it - the search warrant.*
HAEG: *Ok so as you see you would have everything to gain and nothing to lose for challenging it?*
JONES: *Certainly.*
HAEG: *Ok -um- what are the disadvantages – in your opinion – what are the disadvantages of challenging the validity of a search warrant affidavit for the defendant's attorney?*
JONES: *Well there – there wouldn't be. He'd – if he'd – your attorney?*
HAEG: *Yeah.*
JONES: *Then –uh- no. He – he should be more then happy to do that.*
HAEG: *Ok there's no - no there aint...*
JONES: *He ought... Well...*
HAEG: *-Um-*
JONES: *...no if he's representing you on your behalf and there's a potential of –uh- success in that area that would be entirely a realistic thing to do.*

HAEG: *Ok so if a defendant point – in your opinion if a defendant pointed out, to his lawyer, on day one – the same day he hired him and that lawyer did not utilize that defect in the search warrant affidavit you wouldn't understand that or that – that wouldn't be logical?*
JONES: *That would not be logical...*
HAEG: *Ok.*
JONES: *...in your best interest.*
HAEG: -Um- I think you already. Ok *in your opinion, as a former Alaska State Trooper, do you feel it is in the best interest of a criminal defendant to give the prosecution a 5 hour statement before having any written agreement whatsoever –uh- in regard to charges, charge numbers, charge type -um- –uh- forfeitures, jail time, –uh- probation, -um- license suspens[ion] –uh-*
JONES: *Are you referring to a rule 11 agreement? Because – that's the question huh?*
HAEG: *Ok well I guess I'll just restate the question. As a former Alaska State Trooper in your opinion do you feel it is in the best interest of a criminal defendant to give the prosecution a 5-hour statement while getting nothing concrete in return?*
JONES: *No you do not do that. That would be the best thing – there would be a rule 11 agreement and the – and you would put that in writing and you would – you would substantiate that rule 11 agreement prior to –uh- bearing your breasts so to speak as far as –uh- the charges being held against you - would be my opinion.*
HAEG: *Ok and in your opinion why would you get the agreement before you made this statement and not after?*
JONES: *Well that's quite obvious because if you give it before the – you have it in writing –uh- there's no – nothing to maintain it –uh- it could be pulled out from under you. But if it's in writing both parties have it in writing then it's a – it's record.*

HAEG: *Ok and I guess would it be your opinion that after you made that statement the prosecution may have much more information to file a great many more charges and maybe different charges then they may know about before the statement?*
JONES: *That's why it isn't done until there is a written agreement.*
HAEG: Ok. You said you've known me for 20 years. -Um- in your opinion would I have been better off not hiring Brent Cole?
JONES: Since you asked if it's my opinion having read everything that has taken place I would have to say yes you would have been.
HAEG: *Did you travel with me to McGrath to testify at my sentencing?*
JONES: *Yes I did.*
HAEG: *Did I absolutely demand Brent Cole testify in McGrath at my sentencing so I could look him in my eye as I was being sentenced?*
JONES: *Yes you did. You had a subpoena issued to Mr. Cole to mandate that he be at your sentencing.*
HAEG: *Ok did you see this subpoena?*
JONES: *Yes I have.*
HAEG: Ok and is this subpoena been...
COLE: Can I – can I just object as to relevance? You've done this with every witness. I will stipulate first of all that I wasn't there but I still it's hard for me to imagine the relevance in relevance of a fee arbitration of what this has to do with – this issue has to do with a fee arbitration?
SHAW: Mr. Haeg...
HAEG: Yeah?
SHAW: How do you think this point is relevant? I agree with Mr. Cole...
HAEG: Ok.

SHAW: ...that we've heard this testimony before and so I - I'm sure that you've established that Mr. Cole did not attend...
HAEG: Ok.
SHAW: ...your - your sentencing.
HAEG: I guess I was trying to establish that what (tape change) -um- sorry about that. *I guess I was trying to establish that Mr. Cole's representation of me or lack there of continued to affect me I believe financially after I fired him. But I guess – I guess it – I guess what you're saying is we're dealing with when he was working – or I had hired him and he was working for me. I guess I'm just trying to show kind of the continuing affects of what happened.*
SHAW: *Ok. Well I think you've just - you've made your point...*
HAEG: *Ok.*
SHAW: *...that Mr. Cole didn't come to the sentencing.*
HAEG: Can I – can I ask him what the – can I ask Mr. Jones in his opinion what the significance of that means?
COLE: You know what?
SHAW: Yes I'm interested.
COLE: I'm not goanna argue about it.
SHAW: Ok.
COLE: If it will get it done faster let him ask it because we're spending more time...
SHAW: Ok - ok...
COLE: ... arguing over this.
HAEG: Ok.
SHAW: Yes you may ask him that question.
HAEG: In your opinion Mr. Jones what is the significance or I guess in a – what is the significance of Mr. Cole failing to appear –uh- in order to comply with the subpoena?
JONES: Well on - on the base of that question the - a subpoena is a –uh- is a –uh- an affidavit is a record of the court. He has to appear for it – in my opinion it's still would be outstanding if that hasn't been enforced. And –

and *I do know that you had a tremendous list of questions to ask him that would certainly –uh- had the possibility of changing the sentencing that you received tremendously.*
HAEG: Ok -um- and I – I don't know where this is going but did those - any of those questions could they –uh- yeah I don't –uh- -um- *would any of those questions been damaging to Mr. Cole, in your opinion?*
JONES: *Certainly it possibly could have done that –uh- and I think I already...*
HAEG: *Yep...*
JONES: *...made the statement that I felt that it would.*
HAEG: -Um- ok...
JONES: Can I expound on that just...
SHAW: *It would help us to know what Mr. Cole could have said that would have helped Mr. - Mr. Haeg.*
JONES: No – I have seen them before but I don't. We all have this problem. *Well the second one, for one right off the bat. That's referring to the – the rule 11 agreement that – uh- was –uh- where he gave all of his – the – the information and then the Mr. Leaders pulled that rule 11 agreement out from under him. That in itself was a tremendous – tremendous violation in my opinion. You don't do that. And –uh- (...) three and four it's all –uh- it's all pertaining to that. And I don't know the length of time that that took but –uh- I know there was lots of witnesses to that –uh- those negotiations. And well I probably can't get into the rule – number 11 on this but that was such a miscarriage of justice I can't believe – I'm sorry I shouldn't even comment on it but I - I just don't understand how that number 11 ever took place.*
SHAW: What's the subject of number 11?
JONES: Pardon me.
SHAW: What's the subject of number 11?
JONES: *Its about the moose case that was brought...*
SHAW: *Oh.*

JONES: *...in to the – to enhance Mr. Haeg's –uh- sentence is the only purpose of that whole thing and it was a closed moose case that – that had no business being involved in – in this issue at all in my opinion. And it was – the case had already been closed –uh- by fish - Fish and Wildlife protection and it –uh- was brought back in by Mr. Leaders to –uh- and the only purpose could be a - a - a character assignation* of...
SHAW: By Mr...
JONES: ...of Mr. Haeg.
SHAW: Anything else that you think that –uh- any other ways that Mr. –uh- Haeg was harmed by Mr. Cole's not appearing is there any other subject that he could have discussed? That caused -um- harm to Mr. Haeg because he did not appear at the sentencing?
JONES: Again – again in fourteen rule 11 and lets see if there's any other subject matter here. (Papers shuffling) - Um- it - it heavily – heavily concerning the rule 11 agreement – most of these questions are.
SHAW: Ok. Thank you.
HAEG: -Um- can I point out one more question or I mean one more –uh- question on that or is that?
SHAW: Sure.
HAEG: -Um- could you - *can you look at number 9 on the questions and see if that – that may since – did – did that subject number 9 ever come up at my sentencing?*
JONES: *No that I can recall it didn't but is should – it certainly should have. That would be one that you would have asked Mr. Cole.*
HAEG: Yep.
JONES: –Uh-
HAEG: So...
SHAW: *And what's the subject of that - that you're referring too?*
HAEG: *The subject is –uh- did Mr. Cole advise Mr. Haeg to cancel all hunts after June 1st 2004 in anticipation of the*

*plea agreement? -Um- Mr. Jones –uh- do you think I received any credit whatsoever from the judge during sentencing for all those hunts my wife and I cancelled?*
JONES: *Negative I don't believe that you did.*
HAEG: *Ok. -Um- Mr. Jones do you know if my wife and I either one of us have any other real income whatsoever other then guiding?*
JONES: *Not to my knowledge.*
HAEG: Ok -um- in your opinion as a former Alaska State Trooper is it a crime not to appear in response to a subpoena?
JONES: In my opinion again yes it is.
HAEG: –Uh- in your opinion do you think that there's probable cause to issue an arrest warrant for Brett – Brent Cole for failure to appear in response to a subpoena?
JONES: I would think that would be the case – in my opinion. I wouldn't know that for sure that'd be the Department of Law but –uh- I would suspect that that would be so since it's an affidavit that is that you're sworn to.
HAEG: *Did you ever see or do you know about the wolf control permits or know of them or seen?*
JONES: *Yes I do.*
HAEG: *Ok. -Um- do the wolf control permits provide for violations of the permit including going outside the area that's open?*
JONES: *Yes they do.*
HAEG: Ok –uh- and I guess that's I think all the questions I had for Mr. Jones.
SHAW: You have anything Mr. Cole?
COLE: My understanding is that you looked at the search warrant and it's your opinion that if the search warrant were suppressed that there would have been no evidence against Mr. Haeg and Mr. Zellers in this case. Is that right?

JONES: I – what I presented was my – that my knowledge of the search warrant that – that –uh- Trooper Gibbens said that the –uh- wolves under investigations were in Unit 19C on the search warrant when in fact they were not in 19C they were in 19D and that is the criteria with which I was making that statement on.

COLE: And *would it be your opinion then that that error would constitute a basis for suppressing any evidence found pursuant to any search warrant issued based on that affidavit?*

JONES: *Yes and I have a reason for saying that is because of the way it was structured in the complaint was that it started off with Trophy Lake Lodge is owned by the Haeg family is in 19C then it immediately thereafter the wolves under investigation were in 19C. Well it's established then that because that – that lodge is there and the - the Haeg family own it and the wolves that are –uh- that he's investigating are in 19C when in fact they are not. And so it is giving credibility to the fact that 19C means that the Haeg family are the ones that need to be – to have the search warrant done to them. And then when in the course of the trial –uh- under - well under the rule 11 agreement that – uh- you were negotiating with Mr. Leaders it was pointed out to his very strongly that –uh- that in fact those wolves were in 19D not 19C and so then when he comes back in to court he says those wolves are in 19C again when – when it's pointed out to him that they are not and that shows malice all the way through it that to me you know and I would think that would be a reasonable assumption with anybody that read it.*

COLE: How - *do you know how far away the distance it was between David Haeg's cabin and where the wolves were killed?*

JONES: *There was 2 areas between that. There were A and B I do not know the mileage distance in my mind right off the top of my head.*

COLE: *Do you think there was a circumstantial evidence that the Trooper observed while he was out flying and when he landed where these wolves were which lead him to believe that David Haeg had been involved in shooting these wolves?*

JONES: *But is that circumstantial evidence is that –uh- – uh- allow a search warrant to be – for those wolves to be in an area that they aren't? I mean designated by the Trooper? A circumstantial evidence though if a moose walked across my yard in the snow I would know right where those moose tracks were and I would not say they're over in this guys yard. They're in my yard. So I fail to see your point here.*

COLE: You testified that there would be no disadvantage to filing a motion –uh- –uh- motion to suppress evidence –uh- of a search warrant. Ok? Remember how you - you testified to that?

JONES: Say that again. It doesn't...

COLE: My recollection is when Mr. Haeg was asking you questions you testified there would be no disadvantage to a defendant to file a suppression motion.

JONES: To suppress that search warrant.

COLE: Ok. Have you ever...

JONES: That I know of.

COLE: *Have you ever heard of situations where people are made offers to plead conditioned upon them not filing search warrants –uh- motions to suppress evidence? You ever heard of that before?*

JONES: *Well I would suppose that would be available but at the same time –uh- if you're talking about negotiations towards a rule 11 and then that rule 11 got pulled away then – then it was not a valid arrangement was it?*

COLE: *And you also testified as I understand it that there would be no disadvantages – or no advantages to coming in and –uh- giving a statement to law enforcement people about your involvement in a crime. Is that right?*

JONES: *Why would you do that if you did not get it in writing at the time of the arrangement that you were going to do?*
COLE: *See the – the problem here is that I get to ask the questions and you need to answer them. Every time now you're asking me a question and if you could just answer my question we'll get through this. My question was do you believe that there's ever -um- that there is no benefit to ever walking in and confessing your sins before law enforcement without any deal? Is there never a benefit to that?*
JONES: *It might make you feel better but it certainly wouldn't be any good legally that I know of.*
COLE: *That type of factor doesn't get taken into consideration at sentencing?*
JONES: *-Um- you'd have to ask that question to the – to a judge.*
COLE: -Um- in when you went – traveled out to McGrath and you said that I didn't show up do you know the conversations that occurred between myself and Mr. Robinson?
JONES: No I do know that there was a phone call between the two of you but...
COLE: You know that I talked to him before hand? Ok.
JONES: But I don't know what you talked about. I don't know...
COLE: At the hearing *did Mr. Haeg ever ask the judge – "Judge I want Mr. Cole to be a witness at this hearing. I gave him a subpoena. I want him to be a witness." Did he say that at the sentencing?*
JONES: *I don't recall whether he did or he did not. I know we went though this – that moose thing until – from 11 o'clock in the morning till oh late in the evening – we didn't get out of there until after 2 o'clock in the morning. Which was an atrocity as far as I was concerned.*

COLE: *I guess my question. You don't remember him at any time saying I would like to have Mr. Cole present and testify at this proceeding?*
JONES: *He would not have paid [for a subpoena] if he did not want you there.*

Witness - Kevin Fitzgerald 4/13/06

SHAW: We are back on record with the arbitration matter involving David Haeg and respondent Brent Cole -um- Mr. Haeg has presented his evidence in support of his petition and Mr. Cole's goanna be presenting his case. You can call your first witness.
COLE: Do you want to swear him in?
SHAW: I do. Would you raise your right hand please? Do you swear to tell the truth the whole truth and nothing but the truth in this fee arbitration proceeding?
FITZGERALD: I do.
SHAW: Ok. What's your name?
FITZGERALD: It's Kevin Fitzgerald – last name spelled F i t z g e r a l d
COLE: Now as a defense attorney when you – when you initially heard some of the facts of this case did it raise any concerns -um- about the type of case this could become?
FITZGERALD: It did -um- just so the panel is aware I did -uh- I represented -um- Dr. Gordon Haber who was charged with -um- releasing a wolf from a trap in Tok and it ended up -uh- being in a two week trial in Tok that didn't turn out very well for Dr. Haber or Friends of Animals. So -um- I was somewhat familiar with the kind of political climate, I was aware that Friends of Animals as they continue to do today -uh- are strongly oppose any Wolf Control Program -um- and *initially I was laboring, as I believe Mr. Cole might have been laboring, under a misperception that the State authorities because they had authorized a State Wolf Control Program that – that there might be some sympathy*

*or adhere from the State officials regarding -um- the plight that - that Mr. Haeg and Mr. Zellers found themselves in. And almost immediately Mr. Leaders who was representing the State dispelled that – that belief among Mr. Cole and I by emphatically indicating to me repeatedly that this was not the kind of case that we were goanna find any sympathy for in fact the State was goanna in my view bend over backwards to make sure that for political reasons if nothing else that -uh- in some measure -uh- these gentleman -um- were - the matter was goanna be addressed very sternly.*

COLE: What was your understanding of the circumstances in which our clients – well let me ask you this. *As a defense attorney is it always best if you can - to get some type of immunity agreement before you let your client talk?*

FITZGERALD: *Yes.*

COLE: *Ok. Is that always possible?*

FITZGERALD: *No it's really a – it's – it – it really has to do with negotiation and whose got leverage* -um- if – if you've got the cards on your side you're in a lot better position to dictate the terms with regard to what – how your client may speak, what they may speak about, etcetera. If you're in the opposite side and you don't have very many cards then your whole leverage position is different.

COLE: *Do you recall talking to me about you - our understanding of our client going in – clients going in and giving statements to the officers in this case?*

FITZGERALD: *Well I can tell you my clear understanding from having talked to Mr. Leaders and I will represent here as an officer of the Court and Mr. Leaders indicated that - uh- my client Mr. Zellers was goanna be given immunity that there was nothing about that interview which I characterize as a "king for a day" – there was nothing about that interview that could be used against Mr. Zellers.*

COLE: Did you get that in writing?

FITZGERALD: I didn't get it in writing. I -uh- the practice of law in some measure -uh- requires -uh- representations

and bonds made on the strength of your word and I believe that Mr. Leaders was good for that when he made it.
SHAW: Excuse me. What did you mean a "king for a day"?
FITZGERALD: -Um- it's – it's something that – that I frankly – you don't see -um- as frequently in State Prosecutions but in Federal Prosecutions it's – it's what I describe as -um- the immunity that – that usually is accompanied a letter -um- where you bring your client in and -um- the -uh- protections that are afforded -uh- your client are essentially use immunity protections. The – because the State and the Feds interpret immunity differently *I've always interpreted that if you bought that same kind of offer and protection in -um- the States side that it would be transactional immunity. -Uh- that they wouldn't be able to use it for any purpose whatsoever.*
COLE: But if you read – will you look at the - you know the facts there.
METZGER: Here's the original.
FITZGERALD: Thank you (pause while reading) I – I see that I was cc'd on it so that it would stand to reason -um- that I did receive it. -Uh- I know that – I mean my memory right now is I – I can't recall receiving this although I can - uh- tell you that -uh- my memory is that *you and I had a discussion about this after apparently it became an issue when Mr. Leaders – well not to ascribe ill notice to anybody but after it appeared that Mr. -uh- Leaders was not goanna honor the "king for a day".*
COLE: Or - or at least indicated as such?
FITZGERALD: Yes.
COLE: Did – *do you recall whether we had some difficulty getting Mr. Leaders to put something – some type of – of an offer in writing to us?*
FITZGERALD: *Well I re – recall -um- in fact I believe earlier I saw some reference -uh- to that.*

COLE: Do you recall the first information – did you – do you recall if – if – when the first information was filed in this case?
FITZGERALD: I recall that the quote unquote charging document -um- really pre-dated the arraignment by a matter of days. -Um- this – this was not the kind of typical case that you see where there's a charge, and then there is a whole -uh- there's a whole kind of procedural aspect that is associated with the charge, arraignment, -um- scheduling of status hearings, and trial calls, etcetera that are formally done with the Court. This – this was an – an effort frankly to resolve the case prior to the time that any formal charges were brought -um- so that we could get it all wrapped up -uh- in a hurry and I think that was the intent behind it and that's certainly consistent with my memory as well as my specific memory about the charging document only predating the arraignment by days.
COLE: And do you recall that originally we anticipated that it was not only goanna be an arraignment but the sentencing in McGrath?
FITZGERALD: I have an entry November 8th conference with client regarding status – conference with Scot Leaders regarding holding arraignment and scheduling change of plea sentenc – sentencing for -uh- or a date shortly there after.
SHAW: (...)
FITZGERALD: Yes.
COLE: What was that - can you read that to...
FITZGERALD: -Um- the conference with client regarding status, conference with Scot -uh- Mr. Leaders regarding holding arraignment and scheduling change of plea and sentencing -um- and then there – November 9th there's attend clients arraignment. (Long pause) My – my under – my memory is that we were trying to do this with – as few a

hearings as possible -um- I made some earlier reference with regard to the political climate. One of the things that we were frankly concerned about is that if enough time elapsed between the arraignment, the charge, and the taking of the plea and sentencing that there would be such a public uproar that it might affect our clients ability to change their plea and be sentenced and indeed my memory is that Mr. Leaders had a similar concern that in some measure he was trying to get this kind of taken care of under the radar.

COLE: Do – do you recall me discussing – well let me ask you this. Would you advise a guide, under a scenario like Mr. Haeg had in front of him, to go into a case under what we would call an open sentencing type of arrangement and if not why?

FITZGERALD: It – it would depend on a huge number of factors. It's not an easy determination to make. -Um- I – I – where I believe that my client's exposure may be such that it would enrage the Court or that the Court might impose a very stiff sentence my inclination is always to try to get some set terms. -Um- the concern as I just made some reference to is that in this particular case not knowing exactly how the kind of political and public perception might be viewed that there was a very real risk that -um- *there would be substantial pressure brought to bear on either the prosecution or the Judge with regard to a very serious sentence because I could see a scenario in which the State which was in some measure in a – in a bind because they had authorized the Wolf Control Program and yet a – under the circumstances of Mr. Ze – Mr. Haeg and Mr. Zellers found themselves in there had been a violation of that Wolf Control Program.* That I could see a situation where *the State would take a very strong position in order to appease folks that might be inclined to petition in the street for instance about what was going on with the Wolf Control Program. So I could see an enormous public and political*

*fallout on this.*

COLE: In your discussions with Mr. Leaders did you learn that he needed Mr. Zellers testimony because he didn't have evidence of some of the counts *because he couldn't use Mr. Haeg's statement?*

FITZGERALD: I know that – that – that was discussed. I know that – that was discussed between you and Mr. Leaders; it was discussed between Mr. Leaders and myself, and -um- -uh- it was clear to me that by virtue of the immunity provided that – that Mr. Leaders believed maybe early on that he might have – he wasn't goanna have because of the immunity agreement. As a result of that it was my view and my strong import to my client that he could benefit by virtue of filling the gaps that might be necessary in testifying against Mr. Haeg.

FITZGERALD: May I just make a point of clarification? I was asked about the correspondence -uh- that I believe was exhibit 1. *I have a entry on December 23rd that I'm just looking at now and says reviewed correspondence regarding king for a day from Brent Cole – conference with Cole regarding the same.*

Cross-examination by Haeg

HAEG: Ok. And I think you said – eluded to that you sometimes utilize that to make deals possibly even without anything in writing that well actually I have – I guess let me back up here for a second. Sometimes you have – this relationship is good enough that you will sometimes have a client come in and give a statement to the prosecution without having anything in writing, is that correct?

FITZGERALD: That – that's -uh- that is correct. It - it's not very frequently – that is correct.

HAEG: Ok. How many Fish and Game defendants, like we were out of a hundred would you have go in and give the Prosecution a 5 hours interview with absolutely nothing in writing?

FITZGERALD: A 5 hour interview – I mean you're asking

the question with regard to the 5 hour interview I can't recall a – a 5 hour interview but and nor was my interview a 5 hour interview but -um- with Mr. Zellers but I would say – I would say of the Fish and Game clients -um- you're looking for a number?
HAEG: Yep.
FITZGERALD: Out of a hundred I would say probably maybe 10% of those.
HAEG: Ok that *you would actually have them go in, before you had anything in writing, you'd have them make a statement to the Prosecution, essentially bare your sole and trust to their good nature?*
FITZGERALD: *A – after I had talked to them about what I believe to be the parameters of the interview, yes.*
HAEG: *Ok but you'd of had no discussion as to how many charges would be filed, what kind of charges, or what kind of penalties, none of that would enter into it?*
FITZGERALD: *There usually – these – these conferences don't happen in a vacuum -um- first of all and I don't – I don't mean to make this a long explanation but a lot depends on the relationship you have with a particular Prosecutor and whether you can trust them, -um- a lot depends on what your assessment is with regard to the exposure that your client has,* -um- a lot has to do with whether it's important at that particular stage that your client be cooperative for purposes in negotiating the case. So I – I'm sorry I – it's a difficult thing.
HAEG: Ok - *was my case a big case?*
FITZGERALD: *Your case had -um- had significance not only to you and your business and to Mr. Zeller and Mr. Zellers business but it also had these kind of political overtones that I've been describing.*
HAEG: *Ok. Did my case – and I know I might be shut down on this – have any -um- was it big in regard to my family not just me?*
FITZGERALD: *Well I'm sure – I'm - I'm sure it was – I*

*frankly have met very few clients whose families weren't affected significantly by the either criminal or civil exposure they - they've got.*

HAEG: Ok so would you agree that when someone such as myself that is looking out for a bunch of other people that you have a awesome responsibility – would you call that true?

FITZGERALD: There's no question about it.

HAEG: Ok and in such a big case is it more likely or less likely for the Prosecution to be aggressive and try to make an example of someone?

FITZGERALD: Well in your particular case *I believe that there was the – a substantial risk that there would be a huge motivation on the part of the State to make an example of you for the reasons that we talked about.*

HAEG: Ok. A huge like – like – could you explain what they could do to make it a huge example out of me?

FITZGERALD: Well they – they could reject any - one example of making it a huge thing would be to reject any offers that the defense might provide, force you to go to trial, have the matter publicized extensively, -um- go though in this particular case probably at least a couple weeks of trial, -um- with what I would believe to be -uh- a very poor result for you.

HAEG: Ok. But because of that huge pressure or whatever do you also understand that giving them – giving them everything they want before you nail anything down in writing is maybe more dangerous than on a little – littler case – *I guess what I'm saying is there's a greater chance of things going awry with any cozy little deals with the Prosecutor when there's a huge pressure brought to bear by possibly the Governor, the Attorney General, and that when you place your client in that position of nakedness by having him make a 5 hour interview, including maps that what is there then to protect your cli – are you – are you actually advocating for your client at that point or are you – are you*

*abandoning him?*
FITZGERALD: *Mr. Haeg -um- there's no question that in a bigger case the exposure to your client is greater and there's more potential particularly if you don't have things -um- in writing for things to go wrong. The suggestion that this is a cozy relationship with the prosecution I think it misguided and misunderstands a defense attorney frankly any attorney's responsibility to their client which is zealously to represent that clients interests to the best of their ability.* And regardless if you're talking with a defense attorney or a Prosecutor or any other attorney with regard to cutting some sort of deal as your oath and your obligation to your client you're representing those interests. So I don't want you to think that having developing a relationship with a Prosecutor for the other side serves to undermine the -uh- the obligation you owe to your own client to zealously represent their interests.
HAEG: Ok. -Um- I was trying to get at one more point here and I think you maybe answered it but I'm not sure but I want it answered very clearly. I believe that you said that in a huge case things are more apt to go wrong then in a small case – is that – did you say that and is that true?
FITZGERALD: Well things can go wrong that have greater consequence to your client.
HAEG: Ok but are – is it more likely to happen not that there's a greater consequence – is it more likely that things will go wrong like in my case or in a case of somebody say a 12 year old kid catching 4 fish out of Fish Creek rather than 3?
FITZGERALD: You're asking me a very difficult question to answer because if a – a minor case to me may be -um- a very major case in somebody else's perspective number one and number two is I've had some awful things happen (laughs) in minor cases that all of a sudden made them major cases (laughs) in my view so -uh- I don't know if I can answer your question. I'm not trying to [dodge] your

question I just don't know that I can answer it that way.
HAEG: Ok so you're taking the 5th essentially.
FITZGERALD: No I'm just
HAEG: Ok.
FITZGERALD: It's a difficult
HAEG: Ok do you – *did you agree with Mr. Cole's tactic to have me go in and give a 5 hour interview, with nothing in writing?*
FITZGERALD: I – I wasn't asked -uh- opine regarding -um- Mr. Cole going in on your behalf for -um- an interview -um- I can tell you from my perspective with regard to having Mr. Zellers do the same thing if you were to ask me -um- whether I would do it in 20 situations I – even in hindsight I would have – I would have done the very same thing. -Um- given the same circumstances.
SHAW: Excuse me. Did you answer that you would have done the same for Mr. Zellers or you would have done as Mr. Cole with his client?
FITZGERALD: Well Mr. Zellers was my client at the time so all – all I can really speak of with regard to my perspective and point of view is Mr. Zellers. If you're then asking me a separate question with regard to whether I would have done the same thing with Mr. Haeg I – I – it's – I – I don't know sir – I don't know because I – I – that wasn't something that I was ever asked to do.
HAEG: Ok but *if you would have done it with me or Mr. Zellers you would have had something in writing, correct?*
FITZGERALD: *Well as it turned out I didn't have anything -uh- in writing with Mr. Zellers, which in some measures...*
METZGER: *You said did not?*
FITZGERALD: *Did not*
METZGER: *Did not.*
FITZGERALD: *which in some measure created the problem later on with regard to how that interview was goanna be – to what use that interview could be put. But I can tell you that in my conversations with Mr. Leaders there is no*

*question in my mind that from my perspective what we had agreed to was immunity* -um- so I wasn't concerned about it. I – I – I make (....) is your (...) and so at the time that I was talking with – discussing the matter with Mr. Leaders I really didn't have a concern that there might be any problem that might arise later on because I was so certain that there couldn't be any confusion about it and he'd given – given me his bond.

HAEG: Ok I'm goanna jump out of sequence here. Now say if you and a client chose a course and it involved giving the prosecution a 5-hour interview, with nothing in writing, which I guess I can't put my views in here as to what you really mean when you say that, but if you chose that course there's not a whole lot to protect you from the State pulling that cloak of invincibility off you is there?

FITZGERALD: That presumes Mr. Haeg that you had a cloak of invincibility going in and my – and I think what you and I are missing is based on what I knew early on is that you didn't have a cloak of invincibility – you weren't in a position really of – of strength to negotiate from strength.

HAEG: I made a – ok I made a mistake when I said that. I should have said the cloak of – you said it – the cloak of – anybody remember what he said? Like the cloak of -uh- cooperativeness of going along – *now that cloak after you've given them everything – what's to keep them from pulling that away from you?*

FITZGERALD: *Well at that point you're – you're in a position of trust – you're – you're hoping that the cooperation that you provided will be duly noted. -Um- so in some measure yeah you're – you're – you're taking a – you're taking a calculated risk. But that's what the practice of law is all about.*

HAEG: Ok. But you also said that in a big case the cloak of – of cooperation is more likely to be pulled then in a little case?

FITZGERALD: That – I'm not sure I said that – what I –

what I meant to say if I didn't say it before is the consequence to your client may be greater in a bigger case because their exposure is greater so that even a small – a small mistake or a small misunderstanding can take on enormous import. Where as in a smaller matter it might not have such a consequence on your client.

HAEG: And I boy I'd like you guys just to let me go off like this. I don't know if I'm doing right but. Now a small mistake – *a Rule 11 Agreements struck – after you have this cloak of a cooperativeness – and your client has given a 5 hour interview, a map, already given up a whole years income from he and his wife for this deal, flown in witnesses for this deal from Illinois, Silver Salmon Creek, taken kids out of school, taken three or four people from work, drove up here for the same Rule 11 Agreement and then your attorney doesn't even try – doesn't even say hey we had a deal – now is that attorney an advocate for his client to keep that cloak intact around his client?*

FITZGERALD: *I – I – I don't mean to be – I'm not sure I understand the question.*

HAEG: *Ok let me rephrase the question.*

FITZGERALD: *I will answer your questions honestly I really don't understand the question.*

HAEG: *If you made a Rule 11 Agreement, verbally set in stone, written, your client and his wife had given just about everything they could afford to give, would you have tried to enforce that Rule 11 Agreement, for your client?*

FITZGERALD: *I believe that you would be obligated to zealously advocate for that Rule 11.*

HAEG: *And what is – what is zealously advo – can you explain zealously advocating for the Rule 11 Agreement – can you explain to me what that – what you would be doing?*

FITZGERALD: *Well it would depend on – it would depend on - I'm assuming that there were representations made by Mr. Leaders that he didn't fulfill. As a result of that it was a – a concern with regard to the terms of the Rule 11 not*

*being complied with. Is that – is that right?*
HAEG: *That's correct.*
SHAW: *The deal was no longer on the table in the form that Mr. Haeg believes it was in.*
COLE: *And to the extent that he several times mentioned that it was in writing. There's nothing in writing.*
SHAW: *There's no testimony that it was in writing. So there was – there was a hypothetical that we have before there's an agreement not in writing that they expect for the change of plea in reducing sentencing (...) -Um-*
FITZGERALD: *The – the first step would be to go to the Prosecutor to try encourage them that the terms of the deal were - were set and they should be honored. I think that – that would probably be my first step. The second step has to do with enforceability. That is if you don't get relief from the Prosecutor where are you goanna look for the enforcement of oral terms and I can tell you that you could go to the Judge, you could file a motion with the Judge, but in my view that would be totally unsuccessful because the Judge would look at you and say "well the terms were oral I'm not goanna be an arbiter of what the terms were, how they were communicated, who might have misunderstood, the fact of the matter is you folks have a disagreement with regard to what the terms are"* and ultimately what it comes down to is the – in my view the Court unless it was very - very clear and which would typically mean that it would be in writing would be any possession – position to enforce that by requiring a Prosecutor to abide by his terms. And even then Mr. Haeg there – *courts are very reluctant to impose upon Prosecutors - appreciating that Prosecutors have the not only the ability but obligation to bring the charges and represent the State to intercede and dictate what – what terms might have been struck between counsel.* So I think that the answer to your question the issue about enforceability would be very important and you would have to access and calculate the risks of going forward and

attempting to get the terms enforced and what consequence that might have if they weren't enforced.

HAEG: *Ok so what you're telling me is you've given the State everything, your client has given up both his wife and him a whole years income, flown in people from around the whole countryside, and you're telling me you wouldn't even try because it aint goanna do any good? Why do you have a lawyer?*

COLE: *Can I object for just a second because this has – I understand what he's trying to say but Mr. Haeg has a fundamental misunderstanding of the criminal justice system.*

SHAW: (...)

FITZGERALD: I think you've asked me a number of questions Mr. Haeg and -um- I – I've described to you what I believe the appropriate steps would be and the appropriate assessment of risks would be with regard to whatever – whatever steps you took.

HAEG: Ok. *Can you explain the risks involved in trying to enforce the agreement?*

FITZGERALD: *The risk Mr. Haeg or that if you're not successful before the – if – if you attempt and indeed do for instance file a motion with the Court and the Court rules as I think it would with regard to any kind of oral terms that it does not have the jurisdiction or ability to intercede and define those terms then what you've done is you've really drawn a line in the sand with regard to the Prosecutor and that what you've done is you've made an enemy out of frankly the last person you want to make an enemy of.* Whether we like it or not Mr. Haeg us in the defense bar realize quickly that you are not infrequently in a position where you don't have the leverage and so what relationships you can develop and what ability you can develop with regard to obtaining good term for your client you want to keep in tact because when the rubber meets

the road and you're a criminal defendant it's typically not a pretty picture.
HAEG: Well you're correct as I was the rubber that met the road.
COLE: Can we keep his voice down just a little bit – I don't think there's any reason for anybody to raise their voice in here.
HAEG: I'm sorry. *Are you telling me Mr. Fitzgerald that advocating for your client makes an enemy for you – enemy of the prose – advocating for your client makes an enemy out of the Prosecutor? Is that what I just heard you just say?*
FITZGERALD: No you didn't.
HAEG: I – I thought that's what I heard.
FITZGERALD: I – I don't know how to answer that sir – I – that's what not what I intended to say.
METZGER: There's no question.
HAEG: *Ok – in your opinion if you advocate for your client – excuse me – are you making an enemy out of the Prosecutor?*
FITZGERALD: *It depends on the circumstances.*
HAEG: *I told you the circumstances. I'll repeat them again. Your client gave a 5 hour interview to the State, gave the State maps, gave up a whole years income not for just the client but also the clients wife most peoples arithmetic that's two years income, then for the Rule 11 Agreement you fly people in from around the country from Illinois, from a remote lodge Silver Salmon Creek, take kids out of school, people away from work, drive up here to comply with the Rule 11 Agreement and then the Prosecutor breaks it by filing harsher charges because I believe he -uh- changed his mind. Wasn't even a mistake just changed his mind – didn't make a mistake. And your attorney can't ask for the Rule 11 Agreement to be honored because that would oh make an enemy out of the Prosecutor. Is that what you're telling me?*

FITZGERALD: *I think sir I described my answer to the best of my ability. I've described the – what I believe to be the appropriate steps.*
HAEG: *Ok.*
FITZGERALD: *I don't know that I can make it any clearer.*
HAEG: *Ok. Have you ever heard of a term called detrimental reliance?*
FITZGERALD: *Yes.*
HAEG: *Can you describe it to me?*
FITZGERALD: *The term typically is used in the civil context in which somebody makes a representation, you take certain action based on that representation, and then for lack of a better description they pull the rug out from underneath you. Under certain circumstances you – you can -uh- obtain relief from the Court for that kind of detrimental reliance.*
HAEG: *Does that ever apply to criminal cases?*
FITZGERALD: *I think it's very – I think it's very infrequent that – that – that concept would be one that would be find favor in – in the criminal justice system.*
HAEG: *How come I've been able to find hundreds of cases of it then?*
COLE: Objection.
METZGER: Its argumentative.
HAEG: Ok.
HAEG: So would – in my – in my little deal here you wouldn't ave stood up and asked the Judge to -uh- conduct an evidentiary hearing and I guess I'm probably goanna make a statement that there is some written record or if you pull it all together stuff for of the Rule 11 Agreement.
SHAW: Just ask the question that you have for the witness. *And the question Mr. Fitzgerald I think is if you would have gone to the rule 11 hearing and the accusations would you have enforced the plea agreement?*
COLE: I thought he asked would you have stood up in front of the Judge at the arraignment...

HAEG: That happened.
SHAW: That's what I meant.
COLE: Oh I thought that you were saying a separate – that it's a separate hearing that comes on.
SHAW: Well I take it in this case that there was only the one.
COLE: There was only one but to get the relief he's asking I thought you would have to file a motion to get a hearing?
SHAW: But this – but that wasn't Mr. Haeg's question that's your perception – *Mr. Haeg's question was would you have stood up at this single arraignment change of plea hearing and ask to enforce the plea agreement?*
FITZGERALD: *These – these are not easy decisions to make sir. They – they have enormous consequences and you have to – you have to deliberate and think about what the consequences are goanna be before you take action.*
HAEG: Raises my point exactly. In your opinion [is] a lawyer legally allowed to represent a client if he has a conflict of interest – a direct conflict of interest in representing that client?
FITZGERALD: Well this is the – well I can tell – tell you ethically that there are ethical rules that – that prevent representations when you have a conflict of interests.
HAEG: So is that yes or no? Just kind of be a little more clear for me please.
FITZGERALD: I don't know that it's good practice and there are rules that govern that thing.
HAEG: -Uh- that aint clear to me. Is it clear to you people?
SHAW: I think he answered what you've got. I think answered (...)
HAEG: *Is there a – I'm still kind of dealing with my hypothetical thing that of what happened in this case. -Um- in – where the rubber meets the road – all right in your opinion when the rubber meets the road, your client has just – just basically stripped himself of everything for a deal,*

*you're telling me the client's own attorney – puts his own interests ahead of his client – is that what you're – is that your actual position you're going to take?*
FITZGERALD: *Sir I think I've answered in exactly the opposite way. That is that the intent and the purpose is to put your clients best interests.*
HAEG: How could...
SHAW: Let's take a 10-minute break.
SHAW: We're back on record. This is the fee arbitration matter of David Haeg and Brent Cole. Mr. Haeg is cross-examining Kevin Fitzgerald. Go ahead.
HAEG: Ok. -Um- -uh- *Mr. Fitzgerald in your opinion when a Prosecutor breaks a Rule 11 Agreement does he become the enemy of the client and his client – and that clients attorney?*
FITZGERALD: *I don't think at that stage no.* If the Prosecutors the one that's breaking the agreement.
HAEG: *Why not?*
FITZGERALD: *Well there's nothing for the Prosecutor to be upset about if the Prosecutors the one that breaching the agreement.*
HAEG: *What I asked is if the Prosecutor breaks the agreement that he made with the client and his attorney – so the client and the attorney are one unit – there like the white – (...) cowboys and the Prosecutor is like the Indians and the Indians break the rule 11 agreement does that – that doesn't make them enemies of the cowboys. Is that what you're saying?*
FITZGERALD: *Yeah that's what I'm saying.*
HAEG: And can you elaborate on that for me please?
FITZGERALD: As I said the Prosecutor – if the Prosecutor is the one that's -uh- breaching the agreement they've got – shouldn't have any hardship with regard to -uh- their prospective towards the client and the defense counsel.
HAEG: Don't you think that there might be a little bit a at least irritation?

COLE: Objection argumentative.
HAEG: Have you upheld or overruled or what?
SHAW: (...) Mr. Fitzgerald to answer that question.
FITZGERALD: *I – I think if the Prosecutor is the one breaching the agreement then there's little likelihood that they would be upset about that breach and hold it against the client or the defense attorney.*
HAEG: *But wouldn't the client and defense attorney hold it against the Prosecutor?*
FITZGERALD: *Oh I – yeah – I – I – I – I think that's -uh- breach of the bond and yeah that's – that's a – in – in my measure – I my view that's a very serious matter.*
HAEG: *So why do you say to me then if – since they're now enemies – we'll just use the word enemies cause you brought it up – why do you then say if the client and his attorney wanted to enforce the Rule 11 Agreement they couldn't because they couldn't make an enemy of the Prosecutor?* But the Prosecutor – you guys see where I'm going with this? It's – to me it's pretty apparent.
FITZGERALD: Mr. Haeg what I said is that the issue – *the real issue is one of enforceability and if the attempt at getting a Court to intervene on your behalf and enforce the Rule 11 – if that's goanna be a futile exercise then you probably damaged your clients interests or certainly not served them by making the attempt.* So –
HAEG: *So what you're saying – what you're say - in your opinion what you're saying is – is you can make an agreement and pay oh in my case maybe $700,000.00 dollars for it and just blow it off and let the Prosecutor do whatever he wants?*
FITZGERALD: No I'm not advocating that sir. I'm – I've said that it – it was something that needed to be carefully deliberated and considered and the consequences of the same had to be considered carefully.
HAEG: Ok. -Um- do you trust Prosecutor Scot Leaders in all clients dealings?

FITZGERALD: That was really my first -uh- significant contact with Mr. Leaders I had no reason to believe he wasn't a person of his word. *There are certainly that occurred in this particular case that would leave me subsequently to be more careful about his representations.*
HAEG: Ok. So as a general rule, in your opinion, a defense attorney should be less apt to put his clients in the hand of someone new rather than someone old that they've had a lot of experience with and know a little more about?
FITZGERALD: I – I would say that was fair.
HAEG: Ok - and maybe especially so if there was a big case with immense consequences at stake?
FITZGERALD: I'm not sure I understand the question.
HAEG: If it's a traffic ticket and he goes south on it aint goanna wipe out a family but a big game guide you know the only thing he does might – you might test the waters maybe a little bit with – with something a little less major than a really big case. To kind of – to kind of – in your opinion would you want to get a little track record with the – with the Prosecutor before you trust him with a really big case – I mean and the track record with – with smaller cases?
FITZGERALD: *I could just tell you implicitly I trust people to be good to their word and it usually takes some breach of that bond or somebody telling me that somebody isn't trustworthy before I will be particularly careful with them. It's the nature of the beast – it's nature of being an attorney – we have to trust each other.*
HAEG: *Why is that?*
FITZGERALD: *Because so much of the business of law is handled and is done by representations made by – by other attorneys.* If – if I had to – if I had to confirm everything – every representation that I had with every lawyer – every day – I wouldn't get a lot done for my client. And my clients pay me to advance the law.
HAEG: Ok.

FITZGERALD: And so in that regard if I have to trust somebody, which I typically do, I'll do it.
HAEG: Ok but I guess what I'm getting at is if it was a really – I mean it's – it's kind of like you would take better prepare – preparations in sailing to Hawaii with your family on board then you would taking a rowboat across – I don't know what's a little lake around here – but maybe crossing Ship Creek. You'd take more preparations and be more careful with something that is a – a bigger risk?
FITZGERALD: I think the question answers itself.
HAEG: Ok. -Um- did you trust Mr. – you answered now that you. At the time I made my deal did you trust Mr. Leaders?
FITZGERALD: I don't know at the point that -um- you made the deal and – and what deal you might have been talking about. *I can tell you that I became concerned about Mr. Leaders representations when I was informed by Mr. Cole that he had some hesitation or wouldn't be honoring the -um- the immunity – the "king for a day".* There was – there was another –, and that might have been December before I learned that – it was either in November or December. *In November there was another incident which caused me to believe that there might be concerns about Mr. Leaders's word and that was in -uh- in the time period of say November 8th through 10th when I know from dealing with Mr. Cole and his dealings with Mr. Leaders that there was concerns about whether he was going to – what action he might take in the event that a negotiations or resolution couldn't be reached between you and the State and I specifically recall that there was decisions about if you didn't get a deal done that he would charge you under (A)15 rather than under (A)8(a).*
HAEG: *Ok.*
FITZGERALD: *And at that point I didn't believe that – that was really something that a Prosecutor frankly as frequently*

*as it occurs should be doing. And so I have some questions about Mr. Leaders about that.*
HAEG: Ok. I was thinking of something else. Can you explain you said you had questions about what – what was that exactly?
FITZGERALD: *At various points I had concerns about Mr. Leaders word.*
HAEG: Ok and you'd said December and then November 8th and 10th. Can you say December of what year?
FITZGERALD: I think it was December of – December - uh- it – it - it's consistent with exhibit 1. -Um- December 23 with regard to the review of correspondence regarding "king for a day" from Mr. Cole and it - it leads me to believe that – that he and I had a discussion around that time with regard to whether Mr. Leaders was goanna honor the "king for a day". And that's December 23rd 2004.
HAEG: So I guess what I'm saying there's something – some other evidence out there that I haven't seen?
FITZGERALD: I'm not sure.
SHAW: Mr. Fitzgerald can't answer that question about what you've seen or not.
HAEG: Well is there something other than the king – and I don't know what king for a day but is there something other than this that describes the "king for a day" that you say Mr. Leaders didn't want to honor?
METZGER: When you say this you're (...) exhibit number 1?
HAEG: Ok – yep.
FITZGERALD: *At – at various junctures in the proceeding I had concerns about Mr. Leaders word. This is an example of one of them.* Is that in approximately December when I believe *Mr. Cole informed me that Mr. Leaders was not goanna honor the "king for a day" that I had some real concerns based on my own discussions with Mr. Leaders with regard to his bond.* There was another discussion and *another concern that I had concerning the time period*

*November 8th through 10th when as I understood it there was some discussions about Mr. Leaders upping the anti if you didn't enter a – a some negotiated resolution. And my view of that was that – that – as frequently as it unfortunately happens that wasn't something that – that I was very respectful about.*

HAEG: Ok -um- and I'm probably into questions that I've already asked. I apologize. *Would you have Tony Zellers give – would you have had Tony Zellers give a statement to prosecution without anything in writing if Brent Cole had not have me first give a statement implicating Tony?*

FITZGERALD: I think I would have for the reasons that I've articulated but *certainly the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit.*

HAEG: *Ok so it was more likely that you'd do that because of Mr. Cole's and I actions then if we would have not been...*

FITZGERALD: *involved*

HAEG: *And is that true?*

METZGER: *He's answered that question.*

HAEG: Ok did you know that Mr. Zellers was flying in from Illinois on November 8th to attend this Rule 11 Agreement?

COLE: Objection.

SHAW: Mr. Haeg – I'm goanna overrule the answers to about time, you've had many witnesses talk about the preparations that were made and then (...)

HAEG: Ok.

SHAW: and then we know that – you've had all the witnesses testify. This witness does need to answer this question.

HAEG: Ok. Well I guess just in my defense it would be nice if the witness answers it on the first question so. *Did you ever ask Mr. Cole if Tony Zellers and David Haeg's test – or -uh- -um- interviews could be used against them if the negotiations failed?*

COLE: *Asked and answered (...)*
SHAW: *(...)*
FITZGERALD: *I believe that there was a deal between Mr. Leaders and myself and Mr. Zellers that it wouldn't be used.*
SHAW: *The question was about Mr. Cole's in questions with respect for Mr. Haeg. Can you answer that question?*
FITZGERALD: *I – I can't believe that Mr. Cole believed anything different than I – I did.*
HAEG: Could you ...
SHAW: You didn't have a conversation? That you recall on that subject where Mr. Cole expressed to you on that or not?
FITZGERALD: Not – not until December when it appeared to be – it had become an issue.
HAEG: Can I have the witness read something?
METZGER: If it's a document – what I think what you're holding is exhibit number 1 – the document speaks for itself. It's not necessary for the witness to read it.
HAEG: Ok.
METZGER: Unless you're goanna ask – are you goanna ask questions about it?
HAEG: Yeah. -Um- right here – right here what does it say?
METZGER: For the record – what we're referring to an exhibit that's been marked – previously been marked – I think it's exhibit number 1.
JOHNSON: That is correct.
FITZGERALD: Ok – is – is – is Mr. Cole goanna testify?
SHAW: (...)
FITZGERALD: *Ok well this is written by Mr. Cole it talks about speaking with me on April 28, 2004 regarding – about whether our clients statements could be used against them if we failed to reach a resolution on the case. "I indicated to him that I did not know but I assumed that this voluntary*

*statement by my client was being done was pursuant to our settlement discussions." So the question is what?*
HAEG: *The question is whether he knew for certain or not whether our statements could be used against us if negotiations failed?*
FITZGERALD: *It appears to reflect that he didn't know.* I can tell you my own view with regard to the conversation I had with Mr. Leaders is that it could not be used.
HAEG: Correct so would that – would that -uh- would that indicate that you had known something about the rule – or about the – our – whether or not our statements could be used against us prior to December as you just testified here a minute ago?
FITZGERALD: It – it appears to reflect that there was a conversation with me on about April 28th when we discussed whether the statements could be used against our respective clients. If the question to me is whether I recall that particular conversation I don't. All I can do is tell you that based on my conversation with Mr. Leaders I believe that it could not be used.
HAEG: Ok. *I guess I'm just trying point out that in your opinion you – whether you remember it or not – were discussing whether or not these statements could be used against Tony Zellers or I well before December as you had testified that you remembered. So even though you don't remember you were talking about them very – very – very early in the case whether they could be used against us?*
FITZGERALD: I don't – I don't recall a specific conversation that Mr. Cole and I had on April 28. He documented it – I didn't and I don't see anything in my timesheets that would reflect that we had a conversation specifically about the issue of immunity.
HAEG: Ok. And this is kind of something that we've probably been over. I told you I wrote some notes here. -Um- do you – in your opinion do you think Brent Cole should have at least tried to enforce the Rule 11 Agreement

that I had with Scot Leaders?
COLE: Objection – what Rule 11 Agreement?
HAEG: That one that's supposed to have taken place on November 9th 2004. And I excuse me cause I had notes and these are notes on top of notes and...
COLE: I withdraw my objection.
FITZGERALD: I don't have a basis of knowledge to answer that – I – I don't know that you had a Rule 11 in place. As I recall there was discussions about terms, about how the case might possibly be resolved, but I don't have an independent recollection that you indeed a binding Rule 11 Agreement – either verbally or written at that time.
HAEG: And this one you have probably heard before. If the Rule 11 Agreement had approximately $600,000.00 dollars worth of detrimental reliance on it along with giving...
SHAW: (...)
HAEG: When Brent Cole or in your opinion if Brent Cole told me nothing would have happened if he would have asked the Judge to have had – to have the Rule 11 Agreement upheld is this true?
FITZGERALD: I'm not sure you've asked a question.
HAEG: *If Brent Cole or when – I have it wrote down as when Brent Cole told me nothing would have happened as far as withholding or not upholding – upholding the rule 11 agreement or not upholding it nothing would have happened if he would've asked the Judge to rule to have the Rule 11 Agreement upheld? I guess – and then that's a question then you - I have – is this true? I guess I apologize for not having a clear question.*
SHAW: *Yeah asking him if Mr. Cole's advice is correct?*
HAEG: *Yep. Yes.*
SHAW: *So apparently Mr. Cole –-um... his next question is – if Mr. Cole had apprised Mr. Haeg that making a motion to influence the plea agreement wouldn't have gotten anywhere. Ok can you think about that before I ask the witness (...)?*

HAEG: *Yep.*
FITZGERALD: *I – I want to have to ask one clarification. That – that it wouldn't be enforced or that there wouldn't be any consequence?*
HAEG: *I don't care about the consequences.*
SHAW: *That it would be enforced – it would be enforced.*
FITZGERALD: *Ok so the question is whether – if Mr. Cole informed Mr. Haeg that there would be no consequence for asking the Court to enforce the terms of the Rule 11.*
SHAW: *It wouldn't happen – it wouldn't get them there – get a result (...)*
FITZGERALD: *Then I think it – it harkens back to what I've been saying all along about enforceability. If it's goanna be a futile exercise I'm not sure you advance the ball for your client by going through that futile exercise.*
HAEG: *Would you agree that if you don't try to advance it there when do you actually try to advance it?*
FITZGERALD: *Mr. Haeg can I strike you a deal?*
HAEG: *Sure.*
FITZGERALD: *And that is I – I will respect what you have to say and ask if likewise you accord me the same courtesy.*
HAEG: *Ok.*
FITZGERALD: *And the question with regard to when – that is a decision that needs to be made with your client depending on the particular circumstances as presented. I don't – I don't know the answer to that. It depends on a lot of different factors.*
HAEG: *Ok but I guess where I'm lost is if your client had expressed a wish for a rule 11 agreement and in – in payment for this rule 11 agreement he had paid for it – I mean just outright paid for it – money whatever. Isn't it a reasonable expectation from that client to have his own attorney that he's paying good money for to make an effort to comply with his wishes?*
SHAW: *Mr. Haeg I think that – in some sense the question is that your asking is how (...) what the fee is reasonable,*

*you've gotten what you bargained with Mr. Cole – we'll answer that question for you.*
HAEG: *Ok if – if a Judge heard either myself or Mr. Cole say that there was a Rule 11 Agreement and they wished it to be upheld would she have been required to hold an evidentiary hearing to decide this question?*
FITZGERALD: *No.*
HAEG: *And why is that?*
FITZGERALD: *Because when you wear a black robe you can do a lot of things that pretty much almost anything you want to and you're asking a Judge – my experience tells me sir that a Judge would say "that sounds like a problem of communication between you and the prosecution. Work it out – I'm not goanna in arbitration with regard to what those terms were".*
HAEG: *Ok so I'm new into the field here so in your opinion if essentially what you're putting forth is if the Prosecutor holds out a carrot to get somebody to do something he never has to give them the carrot?*
FITZGERALD: *No – I'm not saying that. The question that was asked of me with regard to whether the Judge would have to hold an evidentiary hearing. I don't believe that the Judge is legally obligated to hold an evidentiary hearing about that particular matter.*
HAEG: *Would it have been likely?*
FITZGERALD: *I don't believe so for the reasons I've articulated.*
HAEG: *Boy (hmm). So in your opinion you should never ever make a Rule 11 Agreement because there's no way of enforcing it.*
SHAW: (...)
HAEG: Ok. Would any normal or effective attorney lie to their own client?
FITZGERALD: I think there are ethical rules against doing that for effect.
HAEG: Can you expound upon that and tell me what

ethical rules there are and maybe what punishment?
SHAW: Mr. Haeg – Mr. Haeg...
HAEG: Ok.
SHAW: We've got books with ethical rules in them (...)
HAEG: Ok.
SHAW: I really don't like the idea of restricting you (...). We believe that you have the right to ask questions (...) but I'm thinking about changing that rule right now (laughs)
HAEG: Ok -um- -um- you talked about making a strategy early on to minimize the damages to a client especially in a fish and game case. Would you make that decision without ever investigating the case?
FITZGERALD: To wait until a complete set of discovering had been provided to you in a – a criminal matter to make a final determination about whether there were legal or factual defenses. With having said that I make decisions all the time fairly early on based on nothing more than what my clients told me. But if my client tells me certain information then it's apparent to me that there probably are not legal or factual defenses that I might use for their benefit and as a result of that we might chose the course to cooperate rather than to go to trial.
HAEG: Ok. -Um- but you'd said the better course is to wait for a complete discovery. What if all you had – what if someone came to you and alls they had was a search warrant on which – in only two days – the search warrant and the search warrant affidavit were – you know the two days that they had it before first coming to you they could show that the search warrant affidavit was based on false information?
FITZGERALD: That would be something that you would need to talk to your client about again that's – that's an issue that with regard to legal or factual defenses it needs to be considered relatively early on and whether there's a defect in the search warrant might be something that you might avail yourself -uh- with regard to suppressing

evidence but that – that's something that would be good to talk to your client about. It doesn't foreclose having made a decision or chosen a path with – with regard to how you're goanna go.

HAEG: Ok but if you just had this limited amount of information and it was already shown to be defective you – and that's a pretty significant – is that a pretty significant defect to have false information on a search warrant affidavit?

FITZGERALD: Sir if my client had told me – given me information which would suggest that they have little to no legal or factual defenses it would mean very little to me whether a search warrant were defective in some way because even if you were suppressed the evidence that might be obtained by that search warrant if the government could obtain the evidence independently you would be in the very same position. So you would have to evaluate what evidence you might be able to get suppressed.

7/11/06

SHAW: 2006F007 my name is Nancy Shaw. I'm the chair of the committee. The other members of the panel are Yale Metzger and Robyn...

JOHNSON: Johnson...

SHAW: Johnson

SHAW: Robyn Johnson (laughs) Robyn Johnson and –um- we are resuming our hearing today. It's –uh- 1:20 pm and we are scheduled to sit today until 5 o'clock. We're scheduled also for tomorrow, if you need that time, from 1 to 5. So we've just been discussing the proceedings off the record. So –um- Mr. Haeg has rested his case and it's Mr. Cole's opportunity. Raise your right hand. Do you swear to tell the truth the whole truth and nothing but the truth in this fee arbitration proceeding?

COLE: Yes.

SHAW: Thank you and you are Brent Cole?
COLE: I am Brent Cole.
SHAW: Ok – go ahead.
COLE: I would admit that our staff made a clerical error on charging him the airplane ticket to McGrath. He ultimately did pay for that. I didn't go on that trip because we thought we had resolved the case. That should be subtracted. That's – that's my fault. But quite frankly I don't want anymore money from David Haeg -um- so it's not a question about the end of this am I goanna ask for David Haeg to pay me the money he owes me. No I've written it off. I don't care about it. I received a call from David -um- or his wife - it went to my secretary actually and it indicated that he was involved in a fish and game case and was referred to Kevin Fitzgerald and he was goanna be meeting with Kevin -um- and he might be considering hiring two attorneys which is pretty strange. Two attorneys for one guide but -um- Kevin was involved with a very large -um- my recollection is and I don't want to be held to it but I think a very large federal case that was taking up an inordinate amount of his time and so he called me and a said "look this is a guiding case -um- I've listened to these people their goanna need more time then I have and so will you take the case?" and I met with them starting on about the 6th of April. In order to explain why we did what we did you have to understand a little bit about the nature of criminal defense in guiding cases – ok – it is different then in criminal, in my opinion, different then criminal defense in regular criminal cases. The reason why these cases are so difficult, in some ways, is because your not dealing with bad people, generally, maybe you could say that about most criminal cases but your not dealing with bad people. You're dealing with people that have a tremendous economic contributions, capital costs, they have tremendous –uh- time and money invested in their businesses and it's one of the few businesses that you can

have it taken away for simple negligence. I mean basically – and – and it's even more important with a person like David Haeg because he's running bear hunts in the spring and bear hunts in the fall in addition to his moose hunting and some caribou hunting and some other things. It's a large part of his income and all of a sudden this is what happens. When I – I can't remember when I first received the search warrant - the affidavit that's part of the record. But it was very shortly after I met with him. And *I will be the first to tell you – I looked at this case from the beginning and said "damage control" - this is a damage control case.* When my client comes in and says "I can not lose my lodge for 5 years, I can not lo - lose my right to guide for 5 years, I can not loose everything I've invested my entire life" and he said it to me over and over "I can not loose that". And I said, "If that's the case, in my opinion David, what we need to do then is make a deal". And my logic was like this – I looked at the affidavit – the affidavit I don't – you know *David has made this big deal about the – the – the distinction of one small portion of the affidavit that may have been wrong and maybe it was wrong I – I literally cannot remember – I don't mentally remember him pointing out <u>this</u> <u>is</u> <u>false</u>. He may have said to me "I – I don't think this is right" or something like that* but when you look at the scope of that affidavit – if you take out the one - which is what you do in criminal law – when you're evaluating in State Court whether or not if you're goanna file a motion to suppress the search warrant and you're goanna – you're goanna do it on the grounds that the search warrant contains false or misleading information you know the general standard is unless it's an intentional falsehood you look at it without that statement being in the search warrant and you determine whether or not there's sufficient evidence. I told David from the beginning – he's correct, his wife is correct – I told them at the beginning I thought there would be significant political fallout from

this. I thought he might be used as an example. And my logic was very simple. Governor Knowles had stopped wolf hunting in Alaska. Even though the ga - Game Board and everybody else wanted it to go forward – that's one of the things he did and he stopped it. When Governor Murkowski came back in he reinstated it. He took a tremendous amount of grief for that. The governor did, the governor's office, the State of Alaska, tourist and – and *I just saw this as just terrible publicity toward the governor if someone who was a guide intentionally took a privilege that the State gave him to kill wolves out of an airplane* – which is about as unfair chase as you can get – unless you do it with a helicopter – and goes outside of his area and shoots wolves and then they're close to the area where he happens to hunt moose – *I just saw a lot of very negative facts in that respect and I saw someone that if the State wanted to make a – an example out of anybody this was a prime case.* The second thing I saw which you know I – I don't understand some of the testimony from the other side but I told David from the very beginning in my professional opinion he was never goanna get that supercub back. I told him that on the first day. I'm not saying that there hasn't been a guide that's not got his plane back but I can't remember one. David had an affinity for this plane. He had done a number of modifications to it that made it a special plane, in his eyes, and I repeatedly told him forget about that plane cause you're not goanna get it back. *I saw no way to get this plane back.* They – they really don't give too much jail time on these things. I mean they like to give a little bit but the kicker is – but – and *the troopers know it – it's the license. That's what's valuable, that's what – that's what hits home, that's what scares all the guides around the State is all of a sudden they could be out of business and they know you know being out of business means you know and for 5 years it is almost impossible to come back.* -Um- and so -um- I started talking to I – I (exhales) -um- David

has raised this deal with Scot Leaders – I did not have that much experience with Scot Leaders - he had not been a DA that long. He was the fish and wildlife DA but I had a number of cases of with him. -Um- 4 to 5 at least – 3 – 3 that I can think of right off the bat. *Two of which resolved themselves in the course of this and – and – and were another part of the reason why I kept telling David -um- that he needed to get the DA onboard.*

COLE: In April things went like this – you know I repeatedly talked to David about what his options were, I told him about this I – I – I (exhales) *I told him that if he did not cooperate they would file charges.* Ok. They knew there were more then 4 – didn't know how many – knew there were more then 4.

SHAW: Does 4 have some significance?

COLE: Well the 4 were the first 4 that they shot – that the trooper came upon and – and did his search warrant. But my recollection is they – I know they knew there were more. I don't know how that was and that's – *the reason I know that is because when Leaders and I talked he demanded to David to –uh- circle with you know on a map where the others were.* He didn't know how many or what had happened but that's part of why we did what did. He said that they would look to a resolution requiring the following. Two charges of unlawful guiding, engaging in illegal hunting activities same day airborne misdemeanors, loss of the – of the aircraft – I mean right off the bat that's one of the first things they say. I told him the value was over 80 thousand dollars, the loss of the guns – which is pretty normal, loss of any interests in the hides and skulls – normal State law, restitution for illegally taken wolves – and I put down "he says 9 – not my understanding" so I knew right then that he's telling me that more wolves have been taken then I'm aware of. The good thing was 2-year loss of guiding privileges, 2-year loss of hunting and trapping privileges – may have also said fishing, no active

jail time all suspended, no active fine, suspended in light of loss of plane restitution and loss of livelihood, informal probation for 5 years. *The client had to agree to cooperate and give a truthful statement. That was a condition of discussing this.* The client has to agree to reveal the location of the kill sites of 9 wolves. I mean I was just throwing things up. You know trying to a – proposals is how we do it or how I do it. -Um-

SHAW: Would you say you're trying to eliminate –uh- guide violations part of the plea agreement?

COLE: Yeah -um-

SHAW: He'd thrown that out and you were trying to think of some different charges?

COLE: He – he was the one who was saying I wanted 2 guiding –uh- what they call AS violations under AS 08.54.720 and those expand the – it's basically just a fine – they're still misdemeanors. It's – it – it doesn't really – there's no greater it's just a larger fine but -um- I wanted it to more properly reflect that it really wasn't guiding you know lets make it what it is same day airborne. -Um- *I will tell you that I brought that up time and time again and it was always rejected you know from their point of view David was a guide, he was involved in same day airborne, and it didn't make any difference whether this – he had a client with him or not – they were goanna charge him with that - that was – that was the bottom line.* -Um- so -um- we then worked on –uh- some things, we called, we talked, we talked and in April and in May you just goanna see them I mean there's just a lot of conversations and we started getting to you know we started talking about – *they wanted David to have an interview quickly, they wanted to go to these places and part of it was because they wanted to know where these other wolves had been shot – I suspect before - um- the evidence went away.* They wanted to get it done and then the – oh I know the other reason was because the – the troopers send a lot of their troopers from areas out to

Bristol Bay for law enforcement and – and once they're out there – there out there for like 2 months just doing law enforcement out in the salmon fishery. *So they wanted to get these interviews done before they ended up leaving and having to leave. So we then scheduled the meeting for June 2004. We did that in my office.* The trooper came -um- *before that in a conversation with Scot Leaders I had asked him -um- "you know is – you're not goanna use my clients statement later on?" I mean I – I – I truthfully I never thought there would be a later one because the only thing I could see is that we were goanna negotiate this.* I had told that to David "you know you can't once you make that decision to make a statement it's very – very difficult to go back" -um- *but before it I had – I'd asked Leaders about that and -um- he said it – that was his understanding. I didn't put it in writing. I – you know that was – that was a mistake of mine. I should have said it at the –uh- at the meeting but –uh- again I never ever expected that there was goanna be anything happen besides a negotiated deal* with that and I told that to David time and time again. *David gave a statement, it went over very well, -um- he was cordial, I thought he did a good job, he admitted that he had made a mistake, -um- he was -um- he felt bad about what happened, I mean appropriately to – in front – I mean you're – you're doing this in front of the DA – it's like an audition, it's like you know we want a good deal. -Um- there was some discussion at the – in some of the hearings that – that I told David not to hunt or – and to cancel their hunts -um- in – starting in the summer of 2004. That's correct.* I could not see, partially because of how we're just sitting here discussing, I could not see how David was goanna get his license back or not get it susp – revoked or suspended for at least 1 year. Never had a discussion on that and *so I counseled him "look you've got time right now – all these fall hunts that are coming up..." cause he was asking me what am I supposed to do about those – what am*

*I supposed to do about them? And I was like "if it was me I'd cancel them or defer them for a year and lets see if you know if you will let me I will try to work out this deal so that you can get – you can take these people the next year. But if it was me I'd start my suspension or revocation right now and then next year you'll be able to – to service these people." So yes I mean I did advise him voluntarily to do it.*

SHAW: Now would he have -um...-

COLE: *And I told that - Leaders at the time we were doing that – I did it on purpose because I wanted him to be able to say when you know when got to his sentencing "well look he started in the fall of 2004 – he'll be ready to go you know if – if – if – if it works my way – if it – if – if we get to a resolution that – the way I want it that in the fall of 2005 he will be able guide again."*

SHAW: *So he wasn't goanna formally surrender his license?*

COLE: *Didn't formally surrender his license.*

SHAW: *You just have the effective date of that suspension be when he'd actually be hunting?*

COLE: And – and I'm getting blamed for this because what happened then is when – when David refused to make a deal, got another attorney, then got convicted the judge took away his license for 5 years – *I don't think he gave him credit for the year he got off. So he effectively got 6 years. And – and David's very unhappy with me on that but at the time the reason we discussed it is because there was no way he was goanna not loose his license for a year and I thought the most prudent thing at that time was let's get it started, lets get this year behind us and you know the judge will see what a good effort you've done, how you've voluntarily surrendered when we go in,* see because ultimately I wanted to get it done 1 year but as you'll see, as we start talking, what we – what we came to the conclusion was is that we agreed to disagree on the license revocation for the longest time and what we agreed to do was that we agreed to a

minimum of 1 year and a maximum of 3 years and we were goanna argue whether it should be 1 year 2 years or 3 years – cause Scot Leaders – I could never get him, until the very end, to agree to the 1 year but *I just figured - "god you know why not start it right now and then come fall of next year if - if things work out for us you'll – you'll have your license back and if it doesn't you're not goanna be able to guide for 2 or 3 years anyway – so you might as well just start it right now."*

SHAW: *Have you had cases in which judges made the license suspension retroactive...*

COLE: *Oh yeah.*

SHAW: *... to a date when somebody voluntarily stopped hunting?*

COLE: *And they – and he was goanna do it in this case too.*

SHAW: *So what was the -um- understanding that you had as Mr. Haeg went into this -um- conversation where he provided information to the prosecutors?*

COLE: *We were – we were falling on our sword.* Ok. *It was a deal that his statement would not be used against him – kind of a king for a day.* We were [f]...

SHAW: *It was a deal? That was the deal?*

COLE: *That was my understanding, yeah. There – there was no deal as far as what the sentence would be or what the outcome would be.*

SHAW: *There was at least some kind of informal use immunity for the statement?*

COLE: *Right* and I – and I documented that in a letter that I sent to Leaders later on. *But that was my understanding at the time, yes. And that if we even wanted to stock – you know to talk deal – to - to have the opportunity to avoid the 5-year loss of license you know this is what we had to do. We had to step up and be truthful about our involvement in the – in these criminal activities.* And then in June – in July things kind of were in limbo. I just don't know the reason why. I know David was frustrated with it. I was

frustrated with it. *Now when you – when you look at this initially you see a whole bunch of charges and – and it was – it was kind of overwhelming* but when you really look at it it wasn't anything that I didn't think wasn't workable. I had been pushing for 1 year – he had said 2 – he said "if you want your client to come in and agree to all this and – and – and if you want sentencing to be over quick we'll just agree to 2 years" and I said "no I don't want to agree to 2 years – I want the opportunity to show you – show the judge that you know 1 year. *Cause it says July 1st – now that was because we had represented that David was not going to be guiding in the fall of 2004 and so he put that date in there. It was goanna be going back to July 1st – it's right there.*

SHAW: *Does it say that?*

COLE: *Yeah "parties agree that each years term will end effective July 1st".*

SHAW: *Uumm hmm.*

COLE: *That's what that means.*

SHAW: *I think it begins July 1st 2004.*

COLE: *Well yes that's - that's what it means. Is that if he gets one year it will end on July 1st 2005. If he gets 2 years it will end on July 1st 2006. And that was to minimize the impact because as I had argued to him "we're not hunting this coming year so you should give us credit for that."* ...We weren't talking about fighting with the State and I – and I always cautioned David about that -um- I – you know I will tell you again David would call me on the phone, David would come into my office and he would be you know "why don't we have a deal? Why don't we fight this? I'm a fighter." So I was like you know "why would you do that David – wh - wh - why do you want to fight this – don't you want - you – you keep telling me – we had this discussion – you keep telling me you want your license in a year. We've come from 5 down to 2 or 3 – we're getting close to 1 – come on – stay with me on this" and – and then things would

settle down. I mean another indication if I had ever thought this was goanna be a trial my retainer in this case would have been $25,000.00. I mean if I know what I know now it wouldn't even be that. -Um- when I started this case I evaluated and analyzed it and *David kept telling me "I'm – I'm not a man of great means you know they've taken my way of support away".* So initially David was very unhappy – not very unhappy but he was – he was – he was unhappy about the initial offer and I'm like "David were not that far apart – yeah it's a lot of counts, yeah they added on this – some of this stuff but you know this is how we work it. We worked on this until -um- oh it was a – I can't remember – so we – we discussed this stuff from September and into October – we continued to discuss the issues and -um- ...

SHAW: Are you speaking of yourself and Mr. Haeg...

COLE: Mr. Leaders ...

SHAW: ...or yourself and Mr. Leaders?

COLE: ... and – and Mr. Haeg too – we're all discussing it. And I you know I apologize – I don't have absolute notes of everything but at the end my recollection is that we had narrowed down basically no jail time, the fine that was being discussed, the forfeiture of the plane , -um- forfeiture of some of the items, and an agreement that he would – you know we would do a sentencing of 1 to 3 years on the license revocation and -um...-

SHAW: In the discretion of the judge?

COLE: Oh yes. -Um- so right around – I – I can't remember if it was before the first information was filed – which is Nov – is a – is – which is – it's dated November 4th. I thought I saw something in the – in my notes – it was September – yeah so no this happened in August. We – we had this discussion in August, I talked to David about...

SHAW: We?

COLE: David and I. Ok I – I – what happened is in August I got a fairly significant reduction in the amount of the

probation and –uh- there – there wasn't goanna be a guide – a – a – a restriction on his fishing and I think we even agreed to do away with trapping for the amount of time. I – I – there was some small details that – that we were negotiated out...

SHAW: *Is that in writing?*

COLE: *No.* But we had talked about and -um- and we had also talked about him getting back some of his items from the forfeiture. And then David called me up –uh- right around the 22nd or the 27th – you can see -um- that we're talking a lot about sentencing issues right then because it's about a month after the initial offer is made, I've been working on it, -um...-

SHAW: Cause we're in September now?

COLE: Yeah we're *in September. And (pause) I can't remember exactly the – the details but David called me up and said, "what about if I want to get my Cub back?" and I said "well the only way I could see that happening is if you go open sentencing in your case"* and he said – I said "but why would you want to do that?" – "well I want the Cub back" – I said "David you don't to open yourself up to open sentencing because you run this risk that you'll get 1 – 5 days or" – *"well I want you to ask Scot Leaders if he will agree to allow me to do an open sentencing".* And we had been working off Scot – yeah that's right – we had been working off Scot Leaders proposal in August and made some modifications to that and I called up Scot Leaders -um- and I said *"hey Scot -um- look you guys are goanna file this complaint as it is with the 11 counts – I know it sounds crazy but what if my client doesn't want to do a negotiated deal like we're talking about – negotiate all the terms of the deal or almost all of them -um- what if just wants to go open sentencing?" and Scot said in his conversation to be initially "yes that's ok" which is what I expected.* I mean I was a DA and – and David brings out this point you know that I was mad later on but it was exactly what I expected. I mean if

you're a DA what difference does it make whether you get a negotiated deal or if you get an open sentencing – I mean if a judge imposes a sentence what do you care. It shouldn't be any problem. *We didn't put that in writing. A week later – about a week later he called me up, we were talking about something else, and he said "hey -um- if you want to do open sentencing I'm going to change the charges..."* and what you have to do is look at the difference between the information and the amended information and that is the unlawful acts by a guide -um- get changed from A8(a) to A15 and *the difference is that if you plead to A15 the judge has to impose at least a 3 year license revocation - under A8 it's only 1 year. So what Scot Leaders was doing was saying "if I've got to go through a hearing on whether I'm goanna get your plane – totally open sentence – then your clients goanna do 3 – 3 years"* and I go "that's BS Scot I mean come on – now what are you doing here – what difference does it make to you – you're goanna get this plane – you know it – we were just - give us the opportunity to go argue for it". He just said "that's what I'm goanna do". *Now for David to stand in here and say that he – that I didn't tell him this before he got here is just wrong – I did tell him over the phone that that was the deal. -Um...-*

SHAW: *You're saying that you told him over the phone...*

COLE: *That if he wanted to go open sentencing they were goanna change the charges and that he would be facing a minimum of 3 years.*

HAEG: *What date was that?*

COLE: *I don't – I don't have a date.* It was one of the conversations I had after September twenty or August – let's see – no this is August 27th – an opportunity for open sentencing.

SHAW: Had Leaders already given you -um- the information or are you just...

COLE: No.

SHAW: ... referring to the information just to show me the difference between...
COLE: Yeah...
SHAW: ... what he is proposing...
COLE: ... he had not filed...
SHAW: ... in the first round.
COLE: ... the information yet. I – he was referring to the plea agreement.
SHAW: He was just goanna add charges.
COLE: Yeah. *He was just goanna change the A8 to A15.* A week before a like – on Friday, before we're to go out to McGrath, -um- I meet Mr. Leaders in the airport because we're going out to do 2 sentencing of 2 separate guides out in Dillingham. *Scot Leaders had already filed the information when I was at the airport, Friday morning, he handed me the amended information. And I said, "what are you doing?" He goes "well this is in case he wants to do open sentencing on – like we talked about." I'm like (exhales) "you now whatever I can't – I can't force you to file a charge the way you want"* -um...-
SHAW: *And so he's telling you "here's an amended information – if you go open sentencing here's what we're talking about".*
COLE: Right.
SHAW: Which is what he warned you about before?
COLE: Right. I mean I – I would just tell you I had had bad experiences with open sentencing and the last thing I wanted David to do was go into any place open sentencing but *David comes to the office on Monday – he brings everybody there – we are planning on going out – I handed him – I think I told him "this is you know here's the deal". I just disagree with David when I said – when he says I never told him before. I did tell him before that Leaders had informed me that if he wanted to go open sentencing they were goanna to change the charges and it was goanna require a 3 year loss of license.* I said it's not fair – I don't

like it – but I don't have any discretion over what the prosecutor files as charges. And I said – and I have my notes here – we went through and talked about it – the options that he had with the group of people in there. So we sat down in the room with the 4 people and I charted this for them. *I – I don't know how many people there were – there was a number of people and we talked what his options were and he was unhappy about the position he was being put in* and I kept saying "you know we went over this"

SHAW: What's...

COLE: *"why can't I have my deal open sentencing on the original amended info – or original complaint?"*

SHAW: Got yah.

COLE: -Um- I told them I was unhappy with what Leaders had done. *I just didn't see number one the benefit of fighting a battle to get open sentencing on the original information and I told David that. I said "to do that you would have to file a motion to require the State to honor a deal that was never in writing."*

SHAW: What was – *what was Mr. Haeg's -um- a primary desire, as you understood it?*

COLE: *When he realized that I think – I think when he realized that I was getting close to getting thing reduced down then it shifted a little bit to where "I want my plane"* but – but I will just tell you I ca – I told him time and time again *I could never foresee a situation that he would get that plane* even if it was open sentencing and so why would you risk everything when so many bad things can happen in so little good can come of it? So there was unhappiness at the meeting, I was unhappy, -um- we talked about the options, we talked about all of these – all of these were on the table for him at that time. Ok. I then got Leaders on the phone that evening and we started discussing stuff. Well I didn't think – *I thought that was great. And so did David. We went to dinner that night – we cancelled our*

*trip to go to McGrath, that night, everybody did. We were supposed to go the next morning.*
SHAW: *Why did you cancel it when you received this offer?*
COLE: *Because we – knew we had to get approval from DEC...*
SHAW: *Oh.*
COLE: Not DEC but Occupational Licensing – so what – there was no reason to put it on for a sentencing – what we were goanna do when we left it that night "ok we've reached an agreement in principal, we'll do the arraignment tomorrow and then we've got our deal and then we'll set it for a sentencing, you'll get your approval from Occupational Licensing cause I wanted involved, and then we'll do this sentencing and it'll save David all the money of flying everybody out there. Save us a full day of doing a sentencing – it's all negotiated. You will hear – I thought – and – and I still – I – I mean David criticized me for not – what happens is Scot Leaders says "I want to arraign him on the amended one" and you'll hear me say "well we don't need to because we've got a deal on the other one" and it's a difference because under the amended one he's facing 3 years and in Scot Leaders mind he just saying "well in case" – I know what he's thinking – in case he backs out of this deal you've got 3 years hanging over your head and I'll just amend it when we go to sentencing and *I'm saying "come on Scot give me a bone you know I got my client* – we don't need to arraign him on the amended one – just do it on the other one because that's the one that the deal falls under" but you know we say we're goanna work out the deals and that's fine with him. *I – I don't see a problem with that – I thought at that time we had a deal. I thought David was happy with the deal. You know he had been able to guide in the spring, it was goanna go back to June 1st – it was originally for 14 months – I think because yeah the one to start June, August and September but I'll talk about that in a minute and -um- you know he was*

*goanna be back in business, he was goanna lose his plane but we always thought he was goanna lose his plane anyway – or I did.*
SHAW: So you went ahead with the arraignment on the amended information?
COLE: We did – we – we – went – we went ahead of and – and that arraignment or that yeah – that transcript of the arraignment is here.
SHAW: So you just plead not guilty – you did that by phone?
COLE: Plead not guilty – yeah.
SHAW: Ok.
COLE: Did by phone – we didn't plead guilty to anything, didn't give up anything -um- *you know I suspect – I – I – I think David was continuing to ask me why don't we try to get my original deal and I was just saying "David you've got what you want – you got a year. You're goanna be back in business – you know as it stood right then – right around September 1st of next year.*
*JOHNSON: So it was goanna start in the summer?*
*COLE: Yep.*
SHAW: *What original deal did you understand Mr. Haeg to be talking about?*
*COLE: You mean what – what...*
SHAW: *You said, "I want the original deal".*
*COLE: I want – I want...*
SHAW: *What was he talking about?*
*COLE: I want – I want – he was talking about going open sentencing on the first information. (Pause) And you know again I – I had been having these discussions with him for so long I just kept saying, "Why do you want to do this?" I mean obviously it's ultimately his choice. I understand that. It is David Haeg's choice but I kept saying "David you know you're not you know – what arguments are we going to give them that are goanna get you this plane and avoid loosing for 5 years?* I mean I've been doing this for 15 years

David." And ultimately it was his choice and *ultimately I let him do that because he hired another attorney.* Scot Leaders and I – I kept refining it – kept refining it. Cause originally it was 36 –uh- with – it was suppose to start in August 1st or September 1st – I got him to go back to June – July 1st – he was goanna be eligible on July 1st 2005 to start guiding again and that was important because I kept telling Leaders – and David was telling me this "how can I keep my business going if I can't even advertise right up until the date? I need you know a period of time to – to advertise – to get my website up and going – to get let people know that I can still be a guide and so I negotiated – it went from September 1st to July 1st that he was goanna get his license back.

You know I really didn't it to break down into a personality – he was very, very unhappy with me at this – this is you know the point where *he's saying "you don't have any loyal to me – all you care about is you know –uh- not making Scot Leaders mad." I said "it has nothing to do with that David but in guiding cases you have to understand the path is through the prosecutors office and we have got to get him on board because otherwise if he argues against us at sentencing or he says the magic words is 'no deal – open sentencing' you're screwed. We don't want that."*

SHAW: At that time was the options still open?

COLE: Yes.

SHAW: All that had happened was that there had been an arraignment?

COLE: That's it. Nothing happened. We were goanna set up for a change of plea. I think it – it may have been set for a change of plea I'm not sure.

SHAW: So the only option – well actually there was that one options I guess that was not on the table and that was a – a plea to the original information?

COLE: Open sentencing.

SHAW: Open, right.

COLE: that was the only one I was told was not on the table.
SHAW: He wanted the 3 years if you were goanna do open sentencing?
COLE: Yes.
SHAW: Ok.
COLE: If – he – he wanted it – if David was goanna argue – was not goanna agree to the forfeiture.
SHAW: Right, ok?
COLE: And we – you know – I – I prepared this thing, your trial options, we went through the 12 counts and I said "you know these are all the concerns that I have – I mean you know some of these – you don't have any defenses to and all you've got to do is be convicted of 1 at trial" and *did we discuss motion to suppress – no I really didn't think we did because I never felt that was a good option. I looked at it - I knew what the law is on search and search warrants. I know that you know minor mistakes don't invalidate a search warrant. I didn't see anything that was a major mistake. I never was told anything that was a major mistake.*
SHAW: I take it that the troopers observations at the kill site and the observations of the plane would have been the evidence even if the search warrant had been founded out?
COLE: No matter what that's exactly right. There's no getting that suppressed. His observations in McGrath, his observations at the scene – the one – the thing that might have been suppressed is what was seized at the lodge.
SHAW: Sure.
COLE: But – I mean the shells and the tracks you know (exhales) that was not goanna get suppressed and I felt that *that could be you know sufficient in and of itself.* -Um- *we talked about filing a motion to require the State to bring the original charges.* I talked about that with him and I said to him "why – yes I could do that David but then I'm goanna have to say that I had a discussion with Scot

Leaders and he said 'x' and he said 'x' so now if I'm right what's – where are we – where's this goanna get us? He's goanna oppose that and he's goanna say 'I didn't say that'. *So now you're goanna have two attorneys fighting each other* but even more important even if he says 'ok you can have open sentencing now there – all deals off" and I'm arguing for 5 years. What could I do? I mean I just – I looked at it and went "why would we file that motion". It's like Judge Rolland once told me on a preemption of a judge *"If you're goanna shoot at the king you'd better kill him - cause if you don't your heads goanna get lopped off" and that's the way I felt with this. If we file a motion against on – against Scot Leaders saying he made a promise to do this – which I'm not even sure that it is you know just saying that that's a possibility – it's ok – and later saying no in front of – I'm not sure even to this day whether you would even prevail but I don't think it makes any difference. The minute you file that motion he – he has every right to say in the world to say, "all deals are off the table". "You could plead open sentencing to everything even if you want the amended information but let me tell you I will be arguing that you would spend 25 days in jail on each count and that will be 250 days because of the harm you've caused the State wolf hunting program and then you won't guide for the next 5 years and we will take your plane."*

SHAW: So am I correct in figuring the conversation went that there – in this fashion there was a proposal from you...

COLE: I said what if he wants...

SHAW: ...open sentencing...

COLE: Yeah what if he wants to go open sentencing?

SHAW: ... and – and Cole – and -um- Leaders made a counter offer – kind of set out 2 different options?

COLE: *He originally said "that's ok with me" then he called me back and said, "I'm not goanna do that. If you do that – if you want that then I'm changing it to A15" and I said...*

SHAW: *How long was it between when he said...*

COLE: *A week – about a week.*
SHAW: *... yes and you said no?*
COLE: *About a week.*
SHAW: *I will write down it was about a week then.* -Um- after he said, "yes" did you ever ace...
COLE: Did we change position at all?
SHAW: ...did he ever accept – did you ever accept it? On Mr. Haeg's behalf did you say, "ok done"?
COLE: Umm hmm. When I came on board or no – when Mr. Robinson came on board...
SHAW: Umm hmm.
COLE: *...one of the things he asked me was "hey –uh- Leaders is talking about using his sent – his statement" and I said well he can't – we agreed – he and I agreed before this that it wasn't goanna be used. That it was just goanna be – I don't know whatever you want to call it – a king for a day or a immunity statement.* So he said, "well will you write a letter to that affect?" And I said, "sure I will" because I remembered the conversation I had with Scot and that's why I wrote the letter I did in December and that's specifically why. It was at the direction of Mr. Robinson, it was what I understood to be the – the arrangement that we had -um- again when I – I never had any idea that David would want a trial but -um- and – and – I...
SHAW: *I take you didn't have any conversation with Mr. Leaders about that statement after your original one? You said "your not goanna use the statement are you?" and he said "no".* Is that the only conversation you ever had with him about it?
COLE: Yeah before – before we went in and did the statement we had that conversation.
SHAW: Right.
COLE: And then *I sent the letter 6 months later and said I just want to remind you this is what I recall so if you try and use it and he moves – to –uh...-*

SHAW: While – this is while you're still representing Mr. Haeg?
COLE: No. Mr. Robinson had just gotten involved.
SHAW: That's when you wrote that, ok.
COLE: Yeah.
SHAW: Was it addressed to Mr. Leaders?
COLE: Yeah. Don't you have – I – I think you have a copy of it.
METZGER: We do.
SHAW: *But there weren't any conversations while you were negotiating these pleas...*
COLE: *No.*
SHAW: *...where he was saying I will or won't use the statement & you were saying...*
COLE: *No.*
SHAW: *...you ought or not – not to?*
COLE: *Right.*
SHAW: There just wasn't any (...-Brent talks over Shaw)
COLE: It never – *it never came up after because we always were discussing resolving the case - which it didn't make any difference.* -Um- this – this discussion about the sentencing of David – ok -um- David wanted me – the – the – originally the sentencing I believe was set for right around September 1st 2005. When he was – after he was convicted. I -um- was goanna be unavailable at that time – I was going hunting myself. I go hunting every year. So I called Mr. Robinson and said "yeah you know I got this notice that you want me to" – you know his secretary I think was calling me and telling me about the sentencing or something like that. I called him up and I said – I said "first of all you understand, Chuck" – I've known Chuck for a long time – done a lot of a cases with him – I said "if I get put on the stand – it's goanna waive the attorney – I – I – I am assuming that –uh- waives the attorney client privilege and I'm not so sure that David wants me on the stand. -Um- there are things that he has told me that would not be

helpful to him at a sentencing - so first of all I'm not goanna be there in September and second of all think real hard about this" and he said "yeah – yeah I know I'll talk to you later". Then the second sentencing came along and I got – *I received a subpoena – I – I admit I received a subpoena from David – I got the ticket* – I called up Mr. Robinson – it's in my notes – and again I talked to him and I said "look I don't – you know I'll do whatever you want but I really don't want to go out there for a full day just to sit around at a sentencing. You know David when he's already not paid me -um- but and you know has basically told me that he's not goanna pay me." But I said on top of that even more important -um- *"I don't think I'm goanna be a good witness for you. I'm happy to talk to you about it but I really don't think so" and he said, "Yeah I'm trying to tell David that you shouldn't do it"* and I said "How about this? What if I just sit at my office – at the sentencing – if you want to call me as a witness call me telephonically" *and he said "that's fine".* I sat in my office all day that day – I never received a call to testify, telephonically, at David's case. I told Mr. Robinson I would be available.

COLE: So I think that's it.

SHAW: Mr. Robinson tell you what -um- he proposed to ask you about at the sentencing?

COLE: No.

SHAW: No?

COLE: I didn't have any idea. I've – I've received over the 3 or 4 occasions letters from David demanding that I answer questions relating to all this and at some point he sent – but I don't think I ever – I don't remember ever discussing it with Mr. Robinson.

SHAW: All right -um- you've been talking for a while Mr. Cole do you need a break before your cross-examination - you all right?

COLE: (...)

HAEG: -Um- Mr. Fitzgerald testified that *Mr. Leaders had told both of you immediately and emphatically that there was going to be no sympathy for Mr. Haeg and Mr. Zellers.* Is that true?
COLE: I don't know what he told Kevin. *I know what he told me and -um- none of it was real good for you -um- he was pretty emphatic about what was goanna happen if – if you were goanna – I mean he – he looked at you and said the troopers looked at you as a bandit and didn't think that you should be a guide and wanted you out of the business and -um- thought that anybody who shot wolves under permission of the State when they were a guide didn't have the qualities of being a guide, shouldn't be a guide, -um- and that the troopers -um- were not sympathetic to you in essence he wasn't very sympathetic to you.*
HAEG: *Ok and when did he make that known to you?*
COLE: *Pretty early in our conversations.*
HAEG: Ok. -Um- you brought up two things there. Is – so you were told that the troopers said I was a bandit and that I shouldn't guide again. And that was told to you by Prosecutor Leaders?
COLE: *I was told that a person who hunted down wolves outside the area of his permit did not lack – did not have the qualities necessary to be a guide, in Alaska, and that you should lose your guide license.*
METZGER: Mr. Haeg I'm listening to these and being – trying to be patient but I don't really I'm having trouble trying to figure out what these have to do with the fee that you were charged?
HAEG: *-Um- I'm goanna try to show that there was gross prosecutorial misconduct and Mr. Cole did absolutely nothing in my favor to stop it.*
METZGER: But – but that doesn't have anything to do with – if we looked at exhibit 3 which are the billing records I don't – is there an entry on the records that you think that's germane to? I mean these are – you can make that

argument when it's your turn to make an argument but I'm trying to see where this has – what this has to do with the - the fee that you were charged – what we're here about is your – is the fee that Mr. Cole charged. If you're suggesting *maybe he should have done more work for you and charged you more* or are you suggest – how I understand...
HAEG: *I'm suggesting the work that Mr. Cole did was – was not to the level of what an attorney's work should be.*
METZGER: Ok but...
HAEG: -Um- do you think I was treated with –uh- fairness by Mr. Leaders?
COLE: When?
HAEG: Till present.
COLE: I – I can't speak – I you got – you didn't – he didn't do anything to you. You got convicted, he argu – he made and argument, the judge gave you a sentence. It's exactly what I – I think it's exactly what I told you was goanna happen.
HAEG: Ok -um- why would the State want to address me so sternly?
COLE: David we talked about this – I don't know how many times. You were a guide. You went out and directly violated a hunting law. You did it in a fashion that violated almost anybodies notion of fair chase. You hunted down wolves outside of an area when you were a guide. You took and assistant guide with you. You took special ammunition, you took a special plane, *you did all of that at a time when the State had gone out on a limb and reinstated the wolf hunt against popular notions across the country. We discussed the fact that Alaska has 600,000 people the rest of the nation has 280 million. Most of them don't think there should be any aerial hunting and that there would – I thought there would be a huge backlash. I warned you about adverse publicity, about reporters showing up at your house if you were goanna be charged. There was a lot of*

*reasons why I thought the State was going to come down hard on you.* We talked about all of those.
HAEG: Ok because of those reasons did it ever occur to you that –uh- there should be some carefulness on how my case was handled?
COLE: I thought there should be carefulness in how your case should handle, yes.
HAEG: –Uh- would you agree that since mine was a big case, and I am a guide, and you know guiding was pretty much all that I did that the exposure to me was pretty big?
COLE: What do you mean by exposure?
HAEG: The – the penalties could affect my life?
JOHNSON: Can I – can I just say that I think this was already -um- discussed and I – and I think –uh- Mr. Cole when he made his argument made that very clear about the license and -um- the impact it would have on people and business and other things so I think that's already been made quite clear.
HAEG: Is there a bigger potential, for things to go wrong, if you don't have – have any deals or limitations in writing?
COLE: Well I – I assume that you're talking about this – *there were things in writing -um- Mr. Leaders done things in writing. -Um- can things go wrong? Yeah - I guess they can. Do they always go wrong? No. Is it – is it mandatory that things be in writing? No.*
HAEG: If and I'm trying to – I honestly – I guess I can't testify here but I'm honestly just trying to skip over the stuff and get to the point here. -Um- *Is there any way to – if – if you – if you don't get things in writing and get a verbal agreement is there any recourse?*
COLE: *Yeah.*
HAEG: *And what is the recourse?*
COLE: *You could file – if you thought that you had an agreement in place, and we discussed this, you could file a motion to enforce the agreement that was in place and submit an affidavit and I told you that you could do that in*

*your case – that I would do in this case, if you wanted. It was goanna cost you a lot more money and where was it goanna get us? And we explained and we went through it time and time again. And you could have done with Mr. Robinson as far as I know. I don't know why didn't. That would have been the time to do it.*

HAEG: Can I answer that why Mr. Robinson – or didn't do that with Mr. Robinson or is that testifying?

SHAW: That would be testifying.

HAEG: Ok. -Um- How much money did you say you were goanna charge me for filing this motion?

COLE: I don't remember.

HAEG: Approximately?

COLE: I don't remember.

HAEG: How much do you charge for filing motions for other people?

COLE: I don't charge by the motion – I charge by the hour.

HAEG: Approximately how many hours would it take to file a motion?

COLE: Hmm. It would - probably would've taken 6 to 6 hours – 5 to 6 hours I suspect by the time it's all said and done. Doing the research, doing the affidavit, doing the order, there's some reply, there's reading the other side, doing a reply, and then showing up for a hearing.

HAEG: Ok and is it correct you charge $200 dollars an hour?

COLE: In your case, yes.

HAEG: So you're talking between a thousand and $1200 to file a motion?

COLE: Oh it – again it just depends on the motion. It you know some motions are easy. This one would not have been very easy. I – I suspect generally speaking that's it. *I was looking at the long term and what was goanna happen when that motion got filed.*

HAEG: What do you mean there - can you explain a little clearly – a little more clearly?

COLE: Well like we talked about David if you file the motion and request to have open sentencing under the original information at the end the best that gets you is open sentencing at the – under the original information. And that means now you have to go in front of the judge in open sentencing and I told you time and time again "in my opinion – in my legal advice you do not want to be in front of a judge in open sentencing" because I was very afraid that you would get more then a thousand dollar fine, more then 5 days in jail, and then you would lose your guide license for 5 years – which I felt you could not handle. I told you that time and time again. *And you agreed with me.*

HAEG: What do you mean I agreed with you?

COLE: *You couldn't handle losing your license for 5 years.* We would – talked about what would happen if you fought this.

HAEG: So...

COLE: And so I never understood what the benefit was to you to do this. It was goanna cost you money and all I thought [it] was goanna happen was you were goanna be in a worse position and *I could not for the life of me figure out how I would be helping you by doing that.*

HAEG: Ok. *And you stated that because –uh- it was goanna cost a lot of money – I didn't want to file this motion?*

COLE: You didn't listen to me. I told you I didn't want to file the motion because I knew what would happen if you did file the motion. And that was you were goanna lose your license for 5 years. I told you that. You told me "I don't want to lose my license for 5 years. I can't afford it. I've worked all my life for this." I said "If you file the motion you're goanna lose your license for 5 years. Do you want that to happen?" "No"

HAEG: So is it that reason or the money...

COLE: *It wasn't about money, you paid me. I thought it was a waste of money.*
HAEG: So I paid you to file the motion?
COLE: No you didn't pay me. You had me paid me up to that point. *I thought it was goanna be a waste of your money.*
HAEG: Are you telling me that I didn't want the motion because I was going to get 5 years on my license or I didn't want the motion because it was goanna cost a thousand or 1200 dollars?
COLE: *I don't really remember there being an issue about the money.* I told you that it was goanna be expensive. You know I don't remember what I told it was goanna be. That wasn't my concern David it was the risk that you were placing yourself in by filing the motion. All cases go through the district attorney office – open sentencing is not good for a guide. *Why would you do that? I have still have yet to have somebody tell me why any guide would do that.*
HAEG: *And you're saying that I told you that I did not want to file the motion?*
COLE: *You told me that you didn't want to lose your license for 5 years. I concluded from that that if it was – if this was goanna result in your license you didn't want it.* I can't remember exactly what was said. I just said, "These are you options". I explained them time and time again. But I always told you "if you do this you have to be willing to accept that you're goanna lose your license for 5 years, if you lose, is that a risk you're willing to take?" *I never heard you say that "yes it is – I want to take that risk".*
HAEG: *If I have evidence refuting that do point it out now?*
SHAW: *If you have evidence that Mr. Cole gave you advice that was different, sure. If it contradicts what he's telling you now.*
METZGER: If you have something in writing you can show it to him and say, "Did you write this?"

HAEG: Ok I don't have anything in writing but I have the conversations taped that explain exactly what went on and they're transcriptions so they're not writing.
METZGER: Transcriptions of statements with whom.
SHAW: *That Mr. Cole had made?*
HAEG: *Yes.*
SHAW: Oh – ok sure.
SHAW: Mr. Cole is the only one who needs to be sworn in right now, and he has been. You're still under oath Mr. Cole.
HAEG: Ok -um- *I'd asked you yesterday about why I didn't want the motion to enforce the agreement –uh- moved forward and, I believe you had said that it was because I did not want to risk a 5-year suspension of my guide license. Is that correct?*
COLE: We talked about this on several occasions. I explained to you that it was - it would be against my advice to have you file that motion because, again, I could not understand how it would benefit you. All it did is get us back in front of the judge open sentencing, which I did not understand, I - I put it to you several times. I went back and reviewed the tapes that you made without telling me, of the conversation on the 10th and on the 22nd, which they now have transcripts of it, *specifically I asked you in one of those, "Do you want me to file this?"*
HAEG: *And what did I - respond...*
COLE: *You didn't say - you didn't say anything about it.*
HAEG: That...
COLE: *You did not tell me, "Brent, I want you to file this. I don't care about anything else."* We specifically talked about this. I specifically told you this. So –uh- every time we talked, you ultimately said, "You're right, I don't think I want to lose my license for 5 years" and we talked about the fact that we had it down to 1 year.
HAEG: Can I direct the panel's attention to some evidence?

SHAW: You're asking questions of Mr. Cole. You can direct Mr. Cole's attention...
HAEG: Ok.
SHAW: ...to some evidence.
HAEG: -Um- is the conversation – and I don't know how to do this so I guess I'll give it my best shot. If somebody can...
SHAW: Ok.
HAEG: ...think of a better way. -Um- I'd like you to –uh- I guess read maybe –uh- yeah kind of the bottom of page 10 and then top of page 11. Is that what I had said at that time? And I guess *I'd like you to look at the spot where it says, "That is what I wanted at the time, and that is still what I want, because I feel that they maliciously took that away from me".*
COLE: This is what I said. *"I mean, you know, I've gotta deal with these people, but if you tell me, 'that's the deal I want, I'm not stopping until I get it' I'm goanna send you a letter saying this is absolutely, in my own mind, crazy. But I will do it if you tell me." That's what I told you. You said, "Well, I'm not happy they took away my opportunity, that I thought we had set - had set away from me." "Ok, tell me right now, is that what you want me to do? Do you want to go back and take the risk, when you've got things in place." You said, "You mean, go back to original agreement?" which, "Yes, a minimum one year. A minimum one year. The plane is up for - for the judge to decided is that what the time because I feel they maliciously...." I say "okay." You don't say anything about "that's what I want to do, Brent, I want you to file the motion."*
HAEG: *Does anybody read where I say, "that is what I wanted at the time and that it's still what I want"?*
COLE: I read that. Because I feel they maliciously...but you didn't say, "Brent I want you to file the motion."
HAEG: Ok. Can we go to somewhere else here, also, page 7 please? If you notice, nowhere does it say "motion". Because I didn't know I could file a motion.

COLE: Objection, testimony.
HAEG: Can you go over, I guess, kind of wherever on page 6.
COLE: I don't know what you want me to look at. You need to tell me what you want me to look at, David.
HAEG: I guess reading page 6 and the top of 7, *does it appear like I wanted - the only thing I wanted was to enforce that agreement and the only thing you wanted was to keep me from enforcing it?*
COLE: *No. I don't read it that way at all. I don't read the whole thing that way. I kept telling you, you had options.*
HAEG: -Um- where does it say that I didn't consider them valid options, Jackie? I need to just use this one, I'm used to this one. And I'm sorry, I guess, I apologize for my nervousness. Ok, I have page 9, I don't know exactly where it'll be on your pages, Jackie will try to find it here - it would be page 8.
COLE: You want to look at what it says on page 6 and go over what we talked about on page 6 and 7? Because I think you're...
SHAW: Mr. Cole.
HAEG: Sure.
COLE: ...it supports my position.
HAEG: Ok. I have no problem with that.
SHAW: -Um- Mr. Cole let Mr. Haeg ask his questions. Why don't you invite us to look at the page that you're looking at.
HAEG: Ok, -um-.
SHAW: Is it – is it page 8?
HAEG: Ok - page, I guess page - starting – starting on the bottom of page 7, can I read it, or should just people read it, or should Mr. Cole read it?
SHAW: -Um- this is your time to ask Mr. Cole the questions, so.

HAEG: Oh, it's actually on the bottom of page 6, I guess Jackie pointed out, I'm sorry I got - I had notes on this one and..

METZGER: You can – you can ask Mr. Cole if this transcript accurately reflects the conversation that took place.

HAEG: Ok, does this accurately reflect the conversation that took place?

COLE: As far as I can remember, you have the tape, I didn't know it was being tran - uh, tape recorded. But *as far as I remember this is what was said in our meeting. I'm not denying it.*

HAEG: Ok and do you agree that if you keep reading from whatever on the bottom of page 6 to the top of page 7, you said *"That's because you're goanna lose your license for 5 years" and I said, "Well, I was willing to take that chance".*

COLE: In the past. Was. That's right. You're not telling me I am. You were not telling me that then. And I told you to think about it because I was telling you that you could not affo - you would not handle the risk. And it's become apparent to me that you haven't handled the risk.

HAEG: Um, and then continuing on, I don't - where is this stuff here. Do you agree that where I say, "I'm not blaming you for telling me what you think, that's what I'm paying you for - I think you're taking it that I'm attacking you. I'm not. I want to somehow bring forth, that in good faith, I decided what I wanted to do with my family with your advice, and I take your advice sometimes, sometimes I don't. That's my privilege." You say, "That's right". I say, "That's my privilege". You say, "That's exactly right". I say, *"In my perspective we had an agreement, like for 2 weeks, and I made all the arrangements to in good faith go to McGrath, you follow me so for – so far?" I believe you say "Yes, yeah". Then I say, "After we invested - invested a lot of time, effort and money, committed to that venture to settle it, because my life is getting eaten up by worry, among other*

*things, and I had great expectations to leave McGrath either without a license for 5 years, no airplane, going to jail for 6 months and a two hundred thousand dollar fine, or something a little less. Nothing to do with you. I knew the judge was the one going to be deciding that, but all of that was taken away from me at the last minute by that agreement. Do you agree with that? Or I mean not at the last minute but whatever it was – well beyond when we could have changed anything, saved all the money in the hotel and airfares, etc, etc." You say "the thing that was taken away was the option to go open sentencing total. There were other options that were available that would allow us to go to McGrath, but to go totally open sentencing",* and I say, *"Well to me they weren't viable options"* and you say, *"The only thing that's different was the loss of the plane". And I say, "Yep, and is that – is that ethical for them to do, say 'yep, give us the plane and you have the same day, or the same day in front of a judge', is that how the game is played, all the time?" And you say "yep".*

SHAW: Mr. Haeg – Mr. Haeg, why don't you pause for a moment and have a drink of water.

HAEG: *Is that correct? (Very upset) I didn't care what happened, I wanted a judge to listen to me. (Pause)*

SHAW: Do you want to step out for a moment? You certainly can.

HAEG: Um, is that - *is that what you remember happening?*

COLE: *That's the words that were there, yes.*

HAEG: Ok. *Do you also remember right after that going, "Um, when Magistrate Murphy was on the phone would it have been appropriate, or could I, could I have said, 'Hey judge, before you leave could I put in my two cents worth that I came with the understanding that this was a deal, and then they pulled the rug out from underneath my feet'. Could I have done that at the time?" And do you remember what you said, Mr. Cole?*

COLE: *I – I – I don't exactly remember, this looks like the right thing, it's what I would have told any defendant. The judges normally stop defendants from saying anything, um, and warn them.*
HAEG: *Can you tell me what I could have said that could have been used against me that I did not say in 5 hours of a confession to an Assistant Attorney General and a - an Alaskan State Trooper for 5 hours?*
COLE: I tell - I tell you what I tell everybody. The judges warn everybody. Whether you are going to incriminate yourself or not. They tell that as a matter of routine, every time a defendant appears with an attorney, and starts trying to say something. In fact, *my experience has been the judges like attorneys to keep their clients under control and to not say things.* That's not to say you couldn't have. But I would - I definitely would not have encouraged you, you're right. I was trying...
HAEG: And would that - would that....
COLE: ...to get our deal done.
HAEG: *...would that essentially make me feel threatened so I wouldn't do it?*
COLE: *No I – I can't speak for how you felt David. It shouldn't have. We sat in there...*
HAEG: *It very much did.*
COLE: *...we decided not to go the night before. Everybody went to dinner, we went and had drinks at the hotel, people were happy about the situation, about not having to travel out to McGrath, that the situation was in place that you were goanna be guiding within the year. When we left on the 8th everybody was happy. When we left on the 9th people were happy.*
HAEG: *I don't remember being happy at all.* But I guess I can't testify. *Do you also remember telling me that if I would have continued to insist "she probably would have listened and that would have been the end of it" is that – is that correct?*

COLE: Are we get – it – it says what it says. I think I said that. We goanna go through the whole thing?
HAEG: *So I – what you're saying is I could've laid out that I cooperated with the State from the beginning, gave them a 5-hour interview which led to over double the amount of charges filed against me, gave up guiding for an entire year – the money was already gone, the season was already over, which dang near bankrupt Jackie & I because we still had to pay all the leases and all the insurance and all the bonding and we didn't get any income. Now that – that hurt – hurts. Your saying that that judge would've heard that and said "Mr. Leaders you can just do whatever you want. You could promise this man the moon and when he takes action and sacrifices his life you can just go..."*
JACKIE HAEG: David.
SHAW: Mr. Haeg.
HAEG: I'm sorry. Been through a lot.
SHAW: I know that you've been through a lot but...
HAEG: I'm sorry.
SHAW: ... we – we've got to do this hearing in a way...
HAEG: Ok.
SHAW: ...that makes us all feel comfortable so you really need to collect yourself.
HAEG: Ok. I'm sorry you know but is that *what you're saying Mr. Cole is that and we already had all the witnesses flown in from Illinois, Silver Salmon Creek, took my kids out of school, took people from work, came up here so that they could all testify and the judge would have listened to all that – with – what's called detrimental reliance and she would not have required specific – specific performance of that agreement?*
COLE: *I will tell you again, David, I told you before the hearing that they were not going to allow you to plead open sentence to the first charges and go – and be able to get your plane back.* You knew that before the hearing, ok. When we got at the hearing we discussed all of your options, the

day before the hearing when we met. I laid all 4 of them out. We weren't particularly happy – I wasn't particularly happy but I felt and I still feel (pause-tape change)...

HAEG: Go ahead.

COLE: ...that it was in – not – it was not in your best interest and I told you that. Then we renegotiated the deal on Monday night before the hearing. As a result of that negotiation you agreed that we weren't goanna have to have a sentencing. There was no reason to go out and do the sentencing because we had confirmed all the terms of the deal.

HAEG: You still – *could you answer my question that the judge "would have listened and that would've been the end of it"?*

COLE: *I – I really don't think the judge would've done anything, David.* That is your version. Scot Leaders would have stood up and said "I don't know what he's talking about. I represent he State of Alaska, we make the charging decisions, we don't have any deal like that." And then the judge would have said to me "ok then we're goanna have briefing on that" and *then at your direction I would have filed my affidavit, he would filed his and all of a sudden where would we have gotten us?*

HAEG: Have you ever told me that that is my right to make that decision?

COLE: I think it was your right to make that decision. I made that very clear. You go through that transcript. I say it on time and time again. "What do you want me to do?" *I never read in here "Brent I don't care what happens. I don't care what the risk is I want you to file the motion to enforce my judgment."*

HAEG: *How can I say, "file a motion" when you never mentioned that I could do so?*

COLE: *I did to David. I mentioned it. I talked to you about it.*

HAEG: Are you – I don't know – this might be whatever

argumentative or whatever. *Are you telling me that you can read all this, honestly sit there and tell me that if you'd have said you could of filed a motion that I would have not said "hammer down – let's go – let's get it"?*
COLE: I told you that – *I had it in my notes.* I told you that when we met with Mr. McCommas I had it in my notes and I'm sure I told you this before. I know I told you this before.
HAEG: Exhibit number 17 page 10. -Um- about half way – not quit half way down. Mr. Cole do you remember me saying "yep - yep you've done a good job explaining that to me" kind of talking about the benefits of having everything set in stone. "You know that probably...
COLE: Now wait a minute – wait a minute...
HAEG: Ok.
COLE: ... you said "and I also agree". We're talking about all the detriments. "98% (mumbles) [defendants] know benefits – to know exactly the sentence they're goanna get. Yep – yep I - you've done a good job explaining that to me and I also agree."
HAEG: Ok I agree with that. That's what it says – since Jackie did the transcriptions here – I know they're exact and then it goes on "you know that probably is you know in most the time and probably in my case too but I – *that happens to be a point that I beg to differ." And then you say "ok" and I say "if I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?" and you say "I left a message. I haven't been in touch"...*
COLE: *Right.*
HAEG: *Mr. Cole if – if you'd told me about a motion would I have been – would I have maybe asked about it there?*
COLE: *I don't – I didn't talk to [you] about it there.*
HAEG: Oh.
COLE: We had a number of conversations, David...
HAEG: Ok. So...

COLE: Well lets read what it says before...
HAEG: Ok.
COLE: Let's read what it says right after that...
HAEG: Ok.
COLE: "I mean how much – how much do you really want me to push it? Is that what you want? Is that really what you want me to do David?" And what do you say?
HAEG: "Well..."
COLE: "Well" you don't say "yes" you, say "well". "I mean you know I've got to deal with these people but if you tell me, 'that's the deal I want and I'm not stopping until I get it', I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you tell me." *"Well I'm not happy they took it away from me." "Ok tell me right now is that what you want me to do? Do you want me to go back and take the risk when now you've got things in place?" "You mean back to the origin..." You never come out and say...*
HAEG: *Keep going...*
COLE: *"Brent Cole..."*
HAEG: *...keep going.*
COLE: *"...yes a minimum one year..."*
HAEG: *Yep keep going.*
COLE: *"a minimum year – the plane is up for..." "yes" "the judge to decide. That is what I wanted at the time and that is still what I want. Because I feel that they personally took it..."*
HAEG: Now I may be stupid because I'm not an attorney but Mr. Cole do you feel that when someone says, "that's what I wanted at the time and that is still what I want" – they said yes?
COLE: *No I don't, David. You have to read this whole thing in context; you have to read the whole thing.*
HAEG: Ok. So what you're saying is...
COLE: *I don't think you want it now.* You know the obvious reason. We talked about it time and again...

HAEG: I don't want... I don't want the d[eal]...
COLE: You didn't tell me that.
HAEG: Your telling me that I don't want the deal – that I would've had 1 to 3 years on my guide license, may have forfeited my plane, rather then loosing 6 years on my guide license, $20,000.00 fine...
COLE: That was the risk I told you over and over would happen if you went open sentencing and you obviously refused...
SHAW: Wait...
COLE: ...to listen to me.
HAEG: Would Leaders have been recommending over 3 years at my sentencing...
COLE: I don't know.
HAEG: ...open sentencing?
COLE: When? In what – under what scenario?
HAEG: The only deal that I ever accepted, ever.
COLE: You – *you never got a deal...*
SHAW: Mr. Cole...
COLE: ...there were options on the table.
SHAW: Mr. Cole...
COLE: Yes.
SHAW: ...Mr. Cole and Mr. Haeg you're arguing with each other. Please ask questions.
HAEG: (exhales) I don't know this is – you know I wish I had some formal training. My mistake but I can't afford to hire more – well actually...
SHAW: No your questions are really ok – I just can't have you guys yelling at each other.
HAEG: Ok. -Um- -um- *I need to just go back to the main ones - cause if we're goanna get smoked on time.* -Um- I don't know if I ever got a clear answer about why I did not want to file the motion, if indeed I didn't want to file the motion. *Can you tell me clearly what my reasons were for not filing a motion?*

COLE: The reasons were it was not in your best interest to do it. You were going to put yourself in a worse position by doing it and I could not understand that. Why anybody would do that. And...
HAEG: Ok.
COLE: ...you didn't tell me to do that. And if you had told me to do that I probably would have withdrawn, David, because I never thought it was in your best interest and *I couldn't imagine any rational person doing it.*
HAEG: Again is that my right – to make that decision?
COLE: If you had told me that – that that was what was goanna happen and that you weren't goanna accept anything less I probably would have withdrawn. It probably is your decision. I think it is your decision actually.
HAEG: Ok. Well I guess that's arguing. *And you are while under oath and on record here before the Alaska Bar Association goanna tell me that when I tell you "that is what I wanted at the time and that is still what I want" that I said, "no"?*
COLE: *I'm goanna tell you that if you read this whole thing it doesn't say "I want you to reject every offer and go in and do whatever we have to do to get this original deal" David that's what I'm goanna tell you. If you read this from front cover to back you will not get that sense.*
HAEG: *So when I tell you "well to me they weren't viable options" that – that – that means that there were options that were viable - is that what you're telling me?*
COLE: I can't speak for what you were thinking, David. *You were not half of the time rational in my mind.*
HAEG: So you can look at these...
SHAW: *Mr. – Mr. Haeg I – I think that you've – you've covered this one...*
HAEG: *I've hit that one enough?*
SHAW: *I think you have.*
HAEG: Ok.

HAEG: Ok -um- can you go to –uh- line 202 and is that what you asked Mr. Stepnosky?
METZGER: Of what page?
HAEG: Oh it's line 202 page 6.
COLE: I – I remember saying or it well I – I don't have a specific recollection – I'm not denying that I didn't say "and that was done in the context of discussing what it takes to enforce a Rule 11. Do you remember us talking about that?" I said that – I guess.
HAEG: Ok and what was – *do you remember making the statement about –uh- you talked about the statement that I – "you say I made about "not wanting to rock the boat with Mr. Leaders" and you said, "do you remember that?"" What – what did Mr. Stepnosky answer.*
COLE: *"Yes".*
HAEG: Ok.
COLE: *And that was done in the context of discussing what it would take to enforce a Rule 11. Do remember talking about that?" "Yes I believe that's true." That's what he said.*
HAEG: *Ok -um-*
COLE: *..."do you remember me telling Mr. Haeg that in order to enforce it ... do you remember me telling you what it would take to enforce agreement?" "No I don't recall that". So he doesn't recall it. Cross-examining...*
HAEG: *Yep.*
COLE: *...and calling him as a witness. I recall telling you guys that – it would take – make – filing a motion.*
HAEG: *Ok and what was Mr. Stepnosky's answer to that?*
COLE: *He said he didn't remember it.*
HAEG: -Um- I was a little upset yesterday so *I didn't write down when you told – when you testified about when you told me that the Rule 11 Agreement was going to be broke. Can you refresh my memory?*
COLE: *Dave there was no Rule 11 Agreement, David.* There was an offer made by the State, there were discussions modifying the offer made by the State, there

was an inquiry about whether there was a possibility for another offer – a wr – a - *initially the district attorney said "yes", he called me back about a week later and said "no". I called you and told you...*

HAEG: *Ok what was that date? Can you give me that date?*

COLE: *It was somewhere before – between (long pause)... I believe it happened sometime (pause) I think it happened sometime in September. But I can't be sure. My recollection is you got your offer around the 19th and then I have a notation on the 27th "telephone conference with opposing counsel regarding plea agreement and an opportunity for open sentencing". And I think that's the initial conversation that I had with him where he said "yes".* My recollection is that about a week later and that maybe was on September 8th - I have "telephone conference with client regarding deal investigation" – maybe it was the 14th "telephone conference with client regarding sentencing".

HAEG: Ok but...

COLE: I believe my...

HAEG: Can you...

COLE: ...just please – *my recollection is approximately one week after I spoke with him he came back and changed the deal* and I think it happened sometime in that period.

HAEG: *Ok can you give me an approximate date of when Mr. Leaders said "yes" and an approximate when he said "no"?*

COLE: I just did.

HAEG: I'm confused – I've got September 8th the 14th the 19th.

COLE: Well –uh- like I said...

HAEG: Ok somewhere in there.

COLE: ...I spoke to him about this...

HAEG: Ok so...

COLE: ...on – this possibility on Au – August 27th. That's – that's the best of my recollection. I do not have a specific recollection. I'm looking at the entries in my time slips.

And this particular one is this opportunity for open sentencing. My recollection is when I initially talked to him about it he said "yes". My recollection is approximately one week later *it may have been two weeks he then called me back and said that was not goanna be an option* and then I talked to you on numerous occasions after that and *I think during that time we specifically discussed that.*

HAEG: Ok. *Do you remember testimony, sworn testimony, of people before this panel that you told them, I believe my wife Jackie was one of the people, so she'll be right here listening that it was on November 8th that...*

COLE: *That's when I received...*

HAEG: *...a couple hours before we were supposed to go out there when you told all of us, is that correct?*

COLE: That's – I told you that I had recently received the amended information with the new charges – the Friday before.

HAEG: Ok. *And you're – you're saying that I flew people in, from around the United States, for this Rule 11 Agreement hearing that apparently I mis – forgot was cancelled and everybody forgot it was cancelled too, that flew in?*

COLE: No David. When you – you (exhales) again you were ok with the deal that we were goanna do – the arraignment and sentencing. That was everything was ok. And then we got to the date and you were not happy with the deal. You talked about our options – *I believe we talked about it before that.* We talked about your options. We could have gone out to McGrath, we could have done the sentencing, there were options on the table to do it the very next day, everybody could have done that. I thought we were goanna go out and do the sentencing in accordance with the deal that I had struck. Apparently I was wrong.

HAEG: And what – and what – can you explain very clearly to me what deal that was?

COLE: That deal was for you to be charged under AS

08.54.720(A)(8) which would have been a minimum 1 year.
HAEG: Ok.
COLE: It is essentially the deal that was in place by Mr. Leaders but there were modification to the probation and the hunting privileges. You weren't goanna use your hunting privileges and we were basically – the only thing we were goanna argue about was whether you should get a s – between one and three license suspension. The State wanted the option to argue for 2 or 3 years, I had the option of arguing for 1 year. *We were calling the people because the State's evidence in support of why you should get the higher stan – the higher suspension was because of the moose hunt* and we were goanna have our witnesses were goanna go out to be there, in support of you, to show why the events could not have occurred according to the moose hunt. In fact we sent out in preparation for that we sent the transcripts that your wife did to the judge so that she would have it in – ahead of time, be able to read it and be familiar with it so that we wouldn't be educating her when we got out there on the 9th. That was my philosophy and we talked about that.
HAEG: Ok was there ever – *did I ever ask about open sentencing?*
COLE: Well go over this again?
SHAW: Do you mean ever or do you mean on the 8th?
HAEG: *Ever because he's – Mr. Cole is saying that I would – I apparently I was going out for some sentence that I'd never heard about – or maybe had heard about but never accepted. And I did a lot of things, apparently...*
SHAW: *Well yes he's testifying...*
HAEG: Ok.
SHAW: ...about his recollection in this...
HAEG: Ok.
SHAW: ... it may be different from yours.
HAEG: -Um- did I ever ask you – ok why don't you just think about this. *When did Mr. Leaders send you, and you*

*inform me of the first offer?*
COLE: *Right around August 19th.*
HAEG: *Right - I agree with that. Did I ever – did I accept that offer?*
COLE: *No.*
HAEG: What – what did I say about that offer?
COLE: You were unhappy with it – you – although when we talked about it I – *I thought it was not too bad.*
HAEG: Ok. *But you said I didn't accept that sentence.* What ever happened – did I make – did – a day or two after that did –uh- or did I...
COLE: Over the next 6 weeks, David, 6 to 8 weeks we discussed options constantly over the phone. Ultimately we reached what I understood was a resolution - an agreement by you. Because we put it on for an arraignment slash sentencing. I thought, from my conversations with you, that you were in agreement that this scenario that we talked about would be acceptable. *You never told me "I will not go forward with this deal. I will only go forward with open sentencing."*
METZGER: Question – when you were going – when you were expecting to go out to McGrath it was a – it was for an arraignment and change of plea?
COLE: *Right there - be sentenced and all. It was a whole – we expected it to be a whole day. We had told the judge and she had set aside a full day for that sentencing.*
METZGER: And you had not gone for the – there was the – the discussion some testimony yesterday about an offer that involved 36 month suspension with 12 months or 24 months of the suspension suspended so there...
COLE: That happened on the 8th – the night before we were to go out...
METZGER: Ok.
COLE: ...and that's why we didn't go out.
METZGER: *Right so the offer that came about as I recall this was late afternoon or early evening calls with Mr.*

*Leaders? Sort of disrupted the plans that everybody came up here* and if that deal had been taken it would have...
HAEG: *Is – is Mr. Metzger testifying?*
METZGER: I - I'm asking a question.
HAEG: Ok.
SHAW: *And Mr. Haeg we understand that you have a different view of what happened that evening...*
HAEG: Right ok I mean it's – it's...
SHAW: Ok? This is Mr. Cole's testimony...
HAEG: Ok.
SHAW: ... I – I want to...
HAEG: Ok yeah I – I understand it's just...
METZGER: We're just trying to keep it straight.
SHAW: I understand you. Yes but understand...
HAEG: Ok yeah but...
SHAW: *...that your – your testimony and your witness's testimony is different.*
HAEG: *...it – it's to me it is insane that I can think so much different from him when I had 8 people with me all remember the same thing I did.*
SHAW: *Well that – that's – that's something for us to resolve.*
HAEG: Ok -um- ok *what you're saying is that the deal that we were supposed to go out to McGrath was not for open sentencing?*
COLE: *No it was not.*
HAEG: Ok so you're telling me that - god this is difficult, you're a good lawyer (laughs) -um- *you're telling me that what I had in my mind to do was mistaken?*
COLE: *I have no idea.* I'm telling you what I told you.
HAEG: Ok. *Did I ever ask about open sentencing?*
COLE: *You asked about it, several times. We discussed it, several times.*
HAEG: Ok.
COLE: A number of times and I told you over and over why that was not in your best interest and *it always revolved*

*around the fact that you could not stand that the State had seized your PA12.*
HAEG: Ok...
COLE: And you want – and *the only way that you could see getting that airplane back is to go through a complete open sentencing* which I said it's - was – would never be in your best interest.
HAEG: *Did I tell you to make an open sentencing offer to Mr. Leaders that included 1-3 years on my guide license with the judge to decide, bring in the moose thing which I did not want to talk about but you said would make the State look bad, and everything else would be open.* So in other words I would go out to McGrath, the judge would decide everything except the – both the recommendation from the prosecutor or the deal – the Rule 11 Agreement or whatever – it did have one sort of limitation 1 to 3 years on the guide license and Mr. Leaders would argue for 3 years and we'd argue for 1 and the way I understood it is if we were – there's anything whatsoever wrong with the moose hunt that he wanted to talk about it would be 2 or 3 years, if there was absolutely nothing wrong it would be 1 year. Is – so that's not your recollection?
COLE: *I'm sure you did ask me that and I'm sure I did ask Mr. Leaders that and he said "no".*
HAEG: He never...Ok.
COLE: You asked me, you asked me a lot of things David.
HAEG: Ok.
HAEG: *When – when did you ask Mr. Leaders for an opportunity for me to go open sentencing?*
COLE: Totally open sentencing where every issue is described – is – is determined by the judge is that what you're asking me?
HAEG: I am asking you when...
COLE: Is that what you mean by open sentencing, David? Where every issue is justified at the sentencing...
SHAW: Stop Mr. Cole.

COLE: Well judge – I'm sorry but...
SHAW: Thank you. But we've already hash – *we've already got testimony from Mr. Cole about the conversation that he had with Mr. Leaders – did you just want to have a date?*
HAEG: Ok yeah and it was – and on 8/27...
SHAW: Right.
HAEG: And I guess if – if – if you were asking Mr. Leaders at that time for an opportunity for open sentencing would I have told you to ask him about it at some earlier date?
COLE: I think it was right about that time and I kept saying, "yes I'll ask him". I did ask him.
HAEG: Ok.
COLE: I did what you told me.
HAEG: Yep ok. And so my version that I wanted you to ask him was totally open sentencing, which is what I wanted, Mr. Leaders wanted to talk the moose hunt, so that was let in, and the only other caveat, I believe it's called, was that my guide license would be suspended but it would not be suspended less then 1 year and it would not be suspended anymore then 3 years?
COLE: *I'm sure you asked me about that. I don't ever recall Scot Leaders ever agreeing to that, nor do I – any of my notes reflect that that was ever an option.*
HAEG: Hmm wow. Ok. Now...
METZGER: And maybe there's a – there's a – there's a chronological sequence here I'm trying to keep straight in my mind to...
HAEG: Ok.
METZGER: ...and your questions aren't specific as to this but maybe you could help me by asking these questions. Is...
HAEG: Go ahead and ask him if you want.
METZGER: ...well apparent – apparently there's – *I don't think there's a dispute with respect to Mr. Leaders at some point threatening to amend the charges?* I can't remember if it was amend the information or amend the...

COLE: Amend the information.
METZGER: The information.
HAEG: Ok.
METZGER: And are you asking about these – this open sentencing before or after the threat to amend the information? In other words is it in the context of the original information or the amended? I guess that's something I'm not clear about.
HAEG: Ok well – ok my totally clear recollection is that...
METZGER: What I don't want to know what your recollection is.
SHAW: Wait – wait – wait – wait – wait I'm goanna take control here.
HAEG: Ok.
SHAW: Mr. Metzger I think that -um- if you start asking Mr. Haeg questions we're just goanna be all over the block here.
HAEG: Ok.
JOHNSON: Mr. Haeg I just wanted just to re – it's about – it's 18 minutes to 3:00 so just kind of a time check. Correct till 3:00?
SHAW: 3:30.
METZGER: 3:30 so you have about 45 – 50 minutes.
HAEG: Ok. *Do you ever remember Mr. Leaders saying that he was going to change the charges – file amended charges so that I could not go open sentencing unless I had a mandatory 3 years?*
COLE: *Yes I've already testified to that.*
HAEG: Ok. *And when did he tell you that?*
COLE: I – I - I've told you like - *like 3 times now my best recollection is it happened about a week after I inquired about the possibility.* And *my notes show that I inquired about the possibility around August 8th or August 27th or 28th.* I will tell you my own recollection is that it happened longer – further along in events but for some reason...
SHAW: Further you mean Septemberish more then

August?
COLE: Yeah but well *actually it seemed it was in October but – but when I look at my notes it says I inquired about open sentencing in late August. Which would have been you know 2 weeks after you know we had been we'd gotten the original offer.* I had been making a number of conversations, we're talking about terms, where whittling things down, and then David says "hey well what about doing open sentencing" I'm like "David why would you ever do that?" "Well you know it's my plane" and I go "ok if you want me to ask him I will." *My recollection is approximately a week later is when I got this call back.*
SHAW: *And I take it that it is not your recollection that you told Mr. Haeg for the first time about the amended information on the night before the scheduled change of plea?*
COLE: I – I – I told him they had filed the amended information because they didn't file it until...
SHAW: *But it – but it's – it's not your recollection you told him for the first time about this open sentencing amended information on the eve of that change of plea?*
COLE: *No I - I recall telling David prior to that event. It was not – in - in my recollection it was not an issue.*
SHAW: I understand. I understand – I'm just trying to get the timing straight.
COLE: When we – when we would – when we had scheduled the change of plea...
SHAW: It was for a different deal.
COLE: ...it was – it was for the different deal. I – I you know David and I just have a different recollection about that – I - I apologize.
HAEG: Ok. When was the first information filed?
COLE: *The first information was filed in November.*
HAEG: Ok.
COLE: *But the charges were given to us in August. They told us specifically what the charges were goanna be.*

August 19th that was in the memo. That was in the memo that Kevin had received.
METZGER: Is that exhibit 7?
HAEG: *So there's no way that they could have filed that information with the deal that I had thought I had?*
COLE: I don't know. No.
HAEG: Because...
COLE: I don't think so.
HAEG: Because *do you remember me asking you if I could – I'd be willing to plea to all the charges that Mr. Leaders had I just wanted a judge to listen me?*
COLE: *I remember you telling me that.*
HAEG: *Did Mr. Leaders ever say yes to that?*
COLE: *Yeah he said if you wanted to have A15 a minimum 3 years.*
HAEG: *Oh right off the bat so I never had that agreement?*
COLE: *No later on he told me that. Originally he said...*
HAEG: *Ok later on he told you that – ok.*
COLE: ...he said he'd – no David I've said this time. The first time I asked him it was an off the cuff comment. I mean I knew David was interested in doing this open sentencing. Which I could not fathom why – I understood but I was willing you know I'm negotiating, I'm negotiation, here this- this – this *I go "hey you know by the way what if my guy wanted to just go in and plead open sentencing you got any problems with that?" "no" is the answer I get.* I'm like – he goes "well why would he do that?" I go "listen you know this plane means a lot to him he may do that, ok." *A week later – like - like I said a week later we're talking – we're still talking he goes "hey I'm not going to allow him to do open sentencing with the charges that – that we've sent over. Its goanna be A15."* That's exactly what happened. I said *"Scot why would you do that?"* I mean I can't control the charges he does. *I go "don't do that" he said "well look if we're goanna have an argument over the plane then he's goanna get 3 years"* and I'm like (taps the table). So I told

David that.
HAEG: Ok so *he filed the – the original charges on I believe November 4th. When did he file the amended information?* This is in November...
COLE: He – he filed it the – like the Friday before. He handed it to me on the Friday before. I told you that – we were going out to Dillingham, we were both doing 2 guiding cases before me, he had not done it up to that point because we – I thought had a deal. Obviously David didn't think so but he gave that to me...
HAEG: What and I go...
COLE: ...and *I go "why do you do – why are you doing this?"* And he goes "well..."
HAEG: Can you explain to me...
COLE: ...*"I just don't want to get ambushed out there."*
HAEG: Can you explain to me...
COLE: Have David plead open sentencing and then him not be able to amend the charges.
SHAW: Ok.
HAEG: *Can you explain to me that I didn't – what you meant by that last comment that apparently I didn't think there was a deal?*
COLE: I – I – I guess you didn't think there was a – I –uh- thought we had a deal – we were goanna go out, it was 1 to 3 years, we were goanna argue that, every other term as in place and we were goanna argue whether you got 1 to 3 years and that was the issue and that was the only issue. And that turned out not to be the case. Then we re- and then we said "here are your options – you can go out and do open sentencing, you can do it a couple different ways, or you can have the structured settlements in a couple different ways" and then we made a 5th deal and that was that you got your license back with a small period of incarceration, which you said you didn't care about, in return for getting your license back by July 1st 2005. Which is what we were putting in place and that's what we did.

HAEG: *Ok now why would Mr. Leaders file the original information on November 4th...*
COLE: *You need to ask him - I have no idea.*
HAEG: *...if he knew I wanted something else?*
COLE: *I – you have to ask him – I have no idea. I – I don't know...*
HAEG: *Do you understand what I'm saying there?*
COLE: I – I – I see what your inference is David but I don't think it's as big of deal as you think.
HAEG: Ok.
COLE: They file those things time and time again.
HAEG: *So what you're saying is he filed by mistake?*
COLE: *I'm not saying that at all. I think he filed it (laughs) the way he did. But he changed his mind.*
HAEG: *Ok so he changed his mind before or after November 4th?*
COLE: *You need to talk to him. I have no idea. I had no control over what pleadings he files.*
HAEG: Now...
COLE: What charges he makes...
HAEG: Ok. Ok -um- *is it likely for him to have filed the wrong information when he was going to file the amended one...*
COLE: I have no.
HAEG: *...before filing the original information?*
COLE: *You need to talk to Scot Leaders. I cannot explain to you why he did that. I was not happy with it cause I thought we had a deal.*
HAEG: (laughs) sorry. I make a very poor attorney. Ok *now this letter being in July 6th 2005 would it be a clearer version of your recollection or a less clear version?*
COLE: Now I see what you're saying. It was done cl- done closer to time, I told you that I thought it was later in the middle of October or later in September. *The reason I said August 29th is because my specific recollection is that – my notes from the time slips that I keep says that I inquired*

*about it on August 29th and I felt that it was about 7 days later.* My recollection is that it actually happened later on but I – I don't have – *I wasn't specific enough in my time slips. This says that "sometime after the middle of October you inquired about pleading open sentence to the filed charges so that you could argue.* I indicted I would make that inquiry, which I did, he initially did not have a problem with this. About a week a later however I received a call from him indicated he was amendable to allowing you to plea open sentencing but he was going to change the information to require a minimum 3 year license revocation."

HAEG: Ok. What's...

COLE: "*I believe this happened on or about this happened on or about November 5th."*

HAEG: Ok.

COLE: I apologize...

HAEG: Ok.

COLE: *...maybe it did happen later to that time.*

HAEG: Ok. Ok.

COLE: Hmm.

HAEG: *And did – do you think that before you talked to Mr. Leaders on November 5th that in my mind and in all the witnesses mind, that I called at your request, that we thought we had a deal on November 5th when you talked to Mr. Leaders?*

COLE: No I don't think so David. *Maybe, you know I can't speak for you. I didn't think that that was ever going to be the deal. I never had it in my mind that you wanted open sentencing. I apologize about you know when this actually occurred.*

HAEG: *Why would you make the statement that you just did that you never thought it was going to be the deal?*

COLE: *Cause I never thought you would plead – in your own mind – I never – I told you time and time again "it was goanna be over my dead body that you would plead open*

*sentencing". I could never imagine a scenario where you would do that. Why would you put yourself in a worse position then you had?*
HAEG: *So – so what you're telling me is you – you inquired of Mr. Leaders on November 5th if I could have open sentencing - is that it?*
COLE: *I don't think so. Uhh-uhh.*
HAEG: *Is that it?*
COLE: *No. No.*
HAEG: *I think – I think things are becoming a little clearer for me. I think – I think Mr. Cole here mislead me.*
COLE: Are you goanna testify or...
HAEG: *I think we may need to subpoena – we need to maybe subpoena Mr. Leaders, please. Mr. Shaw.*
SHAW: *No you – you need to have done that...*
HAEG: *Or Mrs. Shaw...*
SHAW: *...you need to have done that before.*
HAEG: I never – you know...
SHAW: This is the – this is the time (...)
HAEG: Ok I didn't know what's going on here but think I do know now.
SHAW: Ok.
HAEG: -Um- *on number 4 can you read number 4 out loud, please, slowly and clearly?*
METZGER: Are – are you talking about exhibit number 7 again?
HAEG: Yes.
COLE: *"On Monday, November 8th you and your family came to our office to meet in preparation for the arraignment and change of plea scheduled to occur in McGrath. It was at that time I informed you of Mr. Leaders' decision* and outlined your legal options."
HAEG: Ok do you agree that on November 8th indeed myself and more then several witnesses – I believe there were – well I don't know – I think there was 8 in our entire party. Some of them flying in from –uh- Illinois. *Do you*

*agree that we all came there as you say in preparation for arrangement – arraignment and change of plea scheduled to occur McGrath the next day? Do you agree that that's what happened?*

COLE: *I – I don't know what your intention was.* I know what my intention was. I know what this says.

HAEG: Ok explain to me again what your intention was.

COLE: My intention was that we were goanna fly to McGrath to do the deal for 1 to 3 years.

HAEG: Ok yep. I...

COLE: And all the other terms were fixed.

HAEG: Oh ok. Ok.

COLE: *It was not that you were going to go open sentence.*

HAEG: *Ok. Ok. Do you also agree that the next line it says "It was at that time...*

COLE: *Yep.*

HAEG: *I informed you of Mr. Leaders' decision and outlined your legal options"?*

COLE: *I informed you of Mr. Leaders' decision to file the amended complaint.*

HAEG: *Now I'm interested in the word "that". It was at "that" time.*

COLE: *Yep.*

HAEG: *Ok. So you waited until I had spent $6000.00 dollars gathering witnesses. You waited until literally hours before we were supposed to do it to let me know that it wasn't goanna happen?*

COLE: *I didn't find out about the amended information until Friday morning when I was going to Dillingham. I didn't get back from Dillingham until Friday night. I didn't call you the next 2 days and I talked to you when you got to my office.*

HAEG: *Yesterday you were so adamant that you called me weeks before...*

COLE: *I – I think I did.*

HAEG: *Now that's on the record.*

COLE: *I do think that's right.*
HAEG: *How can he state two things?*
SHAW: Well the purpose of your cross-examination...
HAEG: *-Um- ok.*
SHAW: *...is to show that his testimony is contradictory...*
HAEG: *Its – it...*
SHAW: *(...) [very quietly says something]*
HAEG: *...Ok I appreciate that and I guess I would like you people to maybe listen to what happened yesterday and listen to what happened today -um- I think we may be looked at that one hard enough. -*
HAEG: *Mr. Cole did you ever try to get my plane back by bonding it out?*
COLE: *No.*
HAEG: And why not?
COLE: *I don't ever remember you asking me to do that.*
HAEG: *I didn't express an – an interest in getting my plane back?*
COLE: *You always had an interest in getting your plane back.*
HAEG: *Are you telling me that I would've had to ASK you about bonding?*
COLE: *I don't think you can get it back when it was subject to a search warrant. My recollection is the State statutes don't allow you to get it back and I may be wrong on that but there's some – the legislatures changed the law and when you can get items that are seized pursuant to a search warrant back and –uh- the State believed that that was evidence of a crime -um- my understanding is you can't get it back but -um- but I – I – I – that's I don't remember you telling me "look I want to bond my plane out or I want to try and get it out of there" and quit frankly I would have told you "I think it's highly unlikely that that would happen anyway David."*
HAEG: *Would you agree that if you said there was any likelihood I would have tried doing it?*

COLE: *I don't know – I can't speak for you.*
HAEG: *Ok. Ok you don't ever remember telling me that you could do this?*
COLE: *I – I may have told you that you could do this. I – I – but my recollection is as we speak to this day (exhales) that when the State has statutes involving when you can get stuff back that's taken pursuant to a search warrant and I do[n't] -and I'm not sure that that can happen.*
HAEG: *Ok. Not sure. Would you say that my plane, that was seized, is specialized for me to make a livelihood?*
COLE: *Your plane is a PA12. Just like PA12's all around the State. It's got some modifications that other people can't have on it but it is a Piper PA12.*
HAEG: *Ok.*
COLE: *You have an affinity for that plane, you think that it's – you can't do anything without it, but it is a plane just like anything else. And I – that was always my opinion on it.*
HAEG: *Ok did you testify yesterday that the plane was so modified the State would not want it?*
COLE: *I testified that the State would not want it because I don't think they could fly it with the modifications that you've done to it. I think only you can – so...*
HAEG: *Ok. So in other words to answer my question of "would you say my plane is specialized for me to make a livelihood" you'd say yes?*
COLE: *No. You could make a livelihood with a Super Cub.*
HAEG: *Ok.*
COLE: *Ever[y] – most guides do.*
HAEG: *Will you say that that plane is more useful to me then a stock Super Cub?*
COLE: *I have no idea.*
HAEG: *Ok. Would you say that that plane was important for my livelihood?*
COLE: *You thought it was. I DIDN'T.*

HAEG: *Ok. So – did I ever tell you that it was important for my livelihood?*
COLE: *You did.*
HAEG: *Ok. Did the State offer a hearing so I could get my plane back?*
COLE: *Nope.*
HAEG: *Why not?*
COLE: *Cause they intended to forfeit it from the very beginning.*
HAEG: Ok. So ok. As my attorney are you supposed to know the law? Or *when you were my attorney were you supposed to know law that would help me?*
COLE: *Yes.*
HAEG: *If the State was required to give me a hearing and you never told me and I was deprived of my constitutional rights of due process -um- oh if the State was required to give me a hearing and you never told me was I deprived of my constitutional right of due process?*
COLE: *Show me where the State's required to give you a hearing.*
HAEG: *–Uh- look at your exhibit that you brought in.*
COLE: *Ok.*
HAEG: The one that says Fish and Game at the top it starts out 16.05.165.
COLE: Right.
HAEG: Where it says due process requirements.
COLE: That's in the civil context, David. That's civil forfeitures. Most of these cases are negotiated as criminal forfeitures as part of the sentencing deal.
METZGER: You have about – I just want to warn you – you have about 20 minutes left and if you want to testify you have about 20 minutes to complete your cross-examination of Mr. Cole and testify yourself, so.
HAEG: Both?
METZGER: Yes.
SHAW: Yeah.

HAEG: Oh...
SHAW: Here – here's the deal. If you want us to consider a case just tell us the name of the case...
HAEG: Ok.
SHAW: ...and the citation as you just have...
HAEG: Ok.
SHAW: ...and we'll consider it when we make our decision.
HAEG: Where ok I can just ask you if this sounds correct. "When the seized property is used by its owner in earning a livelihood, notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where government interest in the seizure is urgent." Does that sound familiar?
COLE: I – my recollection is that case involves people that were fishing illegally and they – the boat owners...
HAEG: Correct.
COLE: ...were different. Also the boat owners were complaining about the forfeiture and the seizure of their boat and in your case David you were both the person who was committing the crime and the owner. And they don't care in Fish and Game – and my impression has been when it particularly because they took it pursuant to a search warrant. I'm not sure that they did that in the Shelikoff case – I can't remember.
HAEG: Ok would you agree that it – this is also the correct "When the seized property is used by its owner in earning a livelihood," and seized property is used by its owner in earning a livelihood "notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees. *Due process does not require that any owner of the vessel seized by the State for suspected use in illegal activity has an absolute right to obtain release of the property – it just means that he has an opportunity to contest the State's reasons for seizing the property."* And my

understanding in the case and let me ask you if this is your understanding? *Was that the State with commercial fishing violations could not seize a persons boat which in the next month they would make their entire year's income. They couldn't seize it and just kind of sit on it and wipe out that year. The people could say, "Hey we'll put up bonding. We'll – we'll get it out. We make our living for the year...*
COLE: *Right.*
HAEG: *...and then we fight about it"?*
COLE: *Right.*
HAEG: *Was that – was that close to what happened to me?*
COLE: *David the time to make that decision was in April – you were almost comatose because you were so depressed about the State walking in and taking all this stuff.*
HAEG: Ok I'd like to testify now please.
SHAW: Ok go ahead your still under oath.
HAEG: Mr. Cole never ever looked at the perjured search warrant affidavit even after Jackie and I told him about it and were willing to show it to him as we had brought it with us to the first meeting with him. Nowhere in the itemized billing, that he keeps very good records, does it show hardly any investigation. It all has to do with – with –uh- negotiations. I investigated the moose thing, myself, I requested the tapes, –uh- he did not request the tapes, did not want to get any of that, Jackie transcribed them, we blew the moose case right out of the water. It helped us. Otherwise I would have lost my guide license for 3 or well I'd of probably lost it for life at trial. -Um- I was the one ok determine ok – blew the moose case out of the water. Cole never thought to do either of these. These tapes caught the troopers tampering with witnesses to essentially frame me, to enhance my sentence at my sentencing. -Um- actually have had meetings with the FBI, supposed to go back and talk to them at length, along with –uh- repress- or congressman Don Young's chief –uh- agent here in Anchorage – liaison whatever. -Um- *Mr. Cole told me it*

*was ethical and legal for the prosecution to break the open sentencing deal and then ask for my plane upfront to get the very same deal back.* He said that was –uh- ethical and legal. *Well the case law that I'm seeking to admit to you proves that it is not legal and ethical. I told Cole on August 18th, after Mr. Leaders sent his first offer, I did not want that deal and I wanted open sentencing. Mr. Cole's own billing statements prove me out.* This is not my imagination. We made an open sentencing agreement – I would plead to everything. I'd plead guilty no contest, whatever, I just wanted a judge to listen to my side of my story. I would have 1 to 3 years on my guide license, I would talk about the moose thing – only because Mr. Cole refused to say that we wouldn't, cause I believe Mr. Zellers and Mr. Fitzgerald didn't have to talk about it. *This did not happen in late October or November as he testified yesterday. The open sentencing agreement made in August –uh- and you should look at Mr. Fitzgerald and Mr. Leaders' correspondence, which I am seeking to be admitted, which Mr. Cole objected to and Mr. Cole's billing – all prove this out.* We had to wait several months for the actual hearing.

METZGER: Which – now do you want to refer to those correspondence now and offer them?

HAEG: If we can – I just – *I think I only have 10 minutes here so I'll just keep grinding along here if you let me.*

METZGER: *If you want us to admit us we need to hear why and hear the objection and decide.*

HAEG: Ok.

SHAW: Let's let Mr. Haeg finish up.

METZGER: Yeah.

SHAW: At 3:30 – he can have 10 more minutes.

METZGER: All right.

HAEG: -Um- the reason why after Mr. Leaders accepted my offer – *the reason why it was a couple months is we did have to buy out or Division of Occupational Licensing had*

*to buy off on it, so that they wouldn't do additional action.* They're slow. *Also we had to find a court date that was satisfactory to everyone.* Mr. Fitzgerald's correspondence with Mr. Leaders shows this very clearly the dates. Because I have nothing in writing from Mr. Cole. Never got anything from Mr. Cole in writing. *Mr. Cole's statements that he told me that we could file a motion to enforce the Rule 11 Agreement is absolutely fantastic. The evidence against him is stunning. Himself on tape, himself in signed letters, and multiple witnesses who have testified before you under oath, he has not one single leg to stand upon. The same exact thing is true about him telling me the deal was going to be broke before we all arrived from around the U.S. on November 8th, 2004. The evidence again is overwhelming. Mr. Cole is lying to you, under oath, to cover his unbelievably malicious actions against me while I was paying him.* It is also fantastic that he invest – or that he – that he made the decision for me to plea out and to give the State a 5 hour interview before he ever had the State's discovery. According to all case law that's ineffective. You do not know what kind of case you have until you get discovery. It's proven out in the case law that I have tons of. Making this decision before having any discovery is ineffective assistance of counsel according to all courts, not getting anything in writing, before giving an interview, has been held to be ineffective assistance of counsel in all courts. Please see the case law that I seek to have admitted. Search warrant affidavit falsification is grounds for suppressing in State court – federal courts have ruled all states must follow the federal case law on this issue. See the case law that I seek to have admitted. –Uh- the evidence against me without those search warrants was not overwhelming. Robinson told me so many – many times if Mr. Cole would've got...

COLE: Objection hearsay.

HAEG: Ok.

SHAW: It's well taken.
HAEG: I would've likely won. There was almost nothing found at the suspicious sites but old tracks in snow that were weeks old. *Brent knew the State probably at the governor's request was going to try to crucify me. Brent did not want to get crucified also so he just handed me to them on a silver platter. There is no doubt about it. The evidence of his active conflict of interest is again overwhelming. See transcripts of everything.* Cole did – Cole – Mr. Cole...
COLE: Is this argument or are we testifying here?
SHAW: It seems – it seems to me like argument but if Mr. – Mr. Haeg wants to use this time to put on his case this way it's ok.
HAEG: Ok *Mr. Cole did not do one thing that prosecutor Leaders would not wished to have Mr. Cole do. Mr. Cole acted exactly like a prosecutor in disguise, exactly. Never did he tell me of the many, many rights, which have protected my interests on the contrary, he lied to me to keep me from exercising them. There's many things, many. I mean I have the case law to prove it. The evidence is overwhelming. Everything Brent said is refuted in many different ways - sworn testimony, Brent Cole himself on tape, Brent Cole's billing records, Brent Cole's letters, correspondence between Leaders and Fitzgerald, Malatesta interview of Cole, Cole failing to show up when subpoenaed. This shows the magnitude of the cover-up.* As Steve Van Goor told me when I asked...
COLE: Objection hearsay.
HAEG: Ok. Can't do that?
SHAW: No you can't repeat other peoples statements.
HAEG: Brent – Mr. Cole even shows his guilt by coming to these proceedings and the first words from his mouth are "I brought my checkbook and I really want to get this behind me." When does an attorney give up money without a fight? When they have done something wrong. *If they are – are in the right it is absolutely nothing for them to prevail*

*over someone who knows virtually nothing of the law, like me.* If I can show Cole was guilty of negligence, malpractice, and/or crimes what could a real investigator or attorney have done to him? Think very carefully about that. How many of you think you could compete with me in the woods – at my job? *I would hereby humbly ask Mr. Cole be held accountable for his felony perjury before you and you are the tribunal. I also ask that he be held accountable for the numerous knowing and malicious violations to deprive me of all my rights to a fundamentally fair proceeding as I am guaranteed by legal, procedural, and constitutional law. I humbly ask Mr. Cole be investigated for conspiracy with Mr. Robinson to deprive me of my constitutional right to compulsory process for witnesses in my favor and likely other crimes.* I ask Mr. Cole be required to return – and return all monies paid, paid to him because *I would have been far, far better off completely on my own with not having him actively sabotage my case by using my trust, my families trust, my fa – and my families money to do so.* I also ask Mr. Cole be required to pay other expenses incurred by him according to Rule 34c in the Alaska Rules of Court – Rules of Attorney Fee Dispute Resolution. I request Mr. Cole be required to pay for my cost incurred for this fee arbitration and those of my attorneys hired since then to make – to right his mistakes. *I request Mr. Cole be required to pay me back for the $6,000.00 and witness fees – caused for him – caused by him for failing to tell me when he found out that the deal for which I was flying them all in for was not going to take place. I also ask you to make recommendations to the grievance committee concerning Mr. Cole's false testimony and perjury before you at this tribunal. As Mr. Metzger has astutely observed I'm here for more then money, I'm here for justice.*

SHAW: Thank you Mr. Haeg.

COLE: Yeah. Well -um- I have reflected upon this case for untold hours leading up to this, leading up to this hearing,

leading up to the hearing we had before the 2 days, I reflected on it when I represented Mr. Haeg for 6 months, I reflected on it -um- after I did. I was concerned about his mental health. I told [Mrs. Haeg] I thought he was goanna commit suicide. -Um- I – I always saw David as a person that could not afford to lose this case and I tried, obviously he disagrees very strangely, and it makes me feel very bad. -Um- there's nothing in there that I read that supports many of the claims that David's made here today. I wish I could go back there and do something different -um- but if I had to do it again I would have done the same thing. He had violated the law and he was guide and it wasn't just a minor violation. It was a potentially politically – political case that – that I always was concerned about would hit the papers and – and there would be a cry of just outrage. It was how do we minimize the damage that has been done in David's case? And you know ultimately David can complain a little bit about what happened but as Kevin said "when you are at the stream or the Y in the road and you make the decision do we cooperate, do we go, do we fight it" – if you make a decision one way it's very hard to go back later on and start going back the other way. I mean I've been criticized for not getting the discovery. *The discovery wasn't made available to me.* I still think that was the right decision. -Um- it was there after difficult because Scot Leaders and the troopers left June – July. We really didn't get a deal out on the table until August and you know *I cannot explain to you the discrepancy between what the letter says and what my recollection says and what my notes are about when this event happened that Scot Leaders told me that he was going*

*to amend the complaint – if David wanted to go open sentencing. I just – in my own mind I cannot resolve it.* My notes say that we talked about open sentencing in August – late August but *the letter says we talked about it – at the – that he gave me the final answer in –uh- at the beginning of November. I was certain that I talked about it with David before that.* I still think that I talked with David before that. I did not preclude his next attorney from filing a motion to get that set aside. His attorney could have done that. *I don't know why he didn't do it.* All I know is that nothing good could happen from David going to any type of a trial because once he was in trial his whole career was on the line, everything he'd worked for and the whole object of this scenario was go avoid that and that's exactly what happened unfortunately. He did get convicted. So I mean if I made mistakes – and I can't – I don't know anybody that doesn't say they're perfect – that says they're perfect and wouldn't have done things better. I would have documented better the discussions I was having with Scot Leaders, to David, and I should have done that. It sh – and that would've made things clearer about what happened. David would call me, I would call them, we would discuss the options, we would discuss my re-negotiations, there was the discussion about the open sentencing. I kept telling him "Why would you do that? Why would you want to risk that? You can't mentally take the risk." I – *I never did anything to keep him from doing his open sentence, I don't believe,* I – I just don't know that I would've continued to be his attorney if he had said to me "Brent I want to be clear - I'm not taking any other deal other then open sentencing or a trial". I think I would have withdrawn because *I knew that David Haeg could not stand the risk of loss. I could tell by his demeanor, from being an attorney for 15 years I knew it.* I – I mean I apologize for this – this clerical error – that we – I will pay the $370 dollars if you tell me to pay it. I think that I represented David zealously. I don't believe

that he's entitled to his money back.
SHAW: Thank you Mr. Cole. Are you ready to go Mr. Haeg?
HAEG: -Um- sure -um...-
SHAW: Ok if you'd glance up at the clock while you're talking you'll notice that straight up is when your time is up.
HAEG: -Um- I'd never been involved in a criminal thing before in my life but I grew up out in the wilderness, all my schooling's been through correspondence, and I learned by reading and when this happened I knew it was goanna be a big deal. Everybody made it – made sure that I knew that. And everybody, including my business attorney, said *I needed the very best.* I tried talk – I tried hiring Jim McCommas and he was busy with a murder trial in Barrow. *He recommended Fitz or Fitzgerald and Brent Cole.* I hired them – hired him and everybody said you need to just draw the line and make the State earn everything that they got because *they're goanna make an example of you and that's why I hired the very best.* If I was goanna plea out I would have done it my – on my own – save me the money. Or at least hired a cheaper attorney. But *I wanted the very best so I had the very best representation that I could possibly get for my family to protect my rights. As time went on I started reading the law and reading all the regulations and you can see that born out and I would see where we could've held – held the State to a high standard, in my case.* –Ms. Shaw you asked if there was a way that I could have got out of this without any affect to my guide license and *Mr. Cole never found out that the wolf control permit was intentionally separate from any hunting, guiding, or any other activity and he never found that out.* Wouldn't affect you know the money is not that a big of deal – *the plane is a big deal and so is my guide license so I was trying to protect the plane and my guide license. The reason why the plane is so important is I*

*use it and only it for flight seeing operations in the summer. So that's why I knew if I lost on the guiding end I could also use my plane for you know other income and it was important to me. I think it's pretty obvious now that Mr. Cole put his view of my best interests and very probably I think his own best interests ahead of my need to know the law – and my rights under law because I asked him that over and over and over again. Whenever I did not think something was fair I said, "How can they do this? There must be a law." And every time if you look in the transcripts every time Mr. Cole said "it doesn't matter – that's the way it is – suck it up" in some of the times what he'd say "just suck it up Dave". I'm like "I'm losing everything – we give them more and more and they never are held to their bargain."* It happened so many times that I – I became afraid and when I'd ask Mr. Cole he would tell me different things. I don't start taping people – I'm not a suspicious person – maybe one of the most trusting persons there are but when *I talked to my business attorney, who used to be a criminal attorney, and he said Mr. Cole actually had you go in and give a 5-hour confession with nothing to be given in return*...

SHAW: You can't repeat statements.

HAEG: Ok.

SHAW: I want you to talk to us about why...

HAEG: Ok Mr. Cole said you know *should we fight – he said no that we shouldn't, in here, when the State welshed on bargains.* I told him on tape that I wanted to fight and if you don't believe that look at where I'm at now. I am now – am on my own after going through 3 attorneys, I've spent $70,000.00 on attorneys, -um- *I gave up about $700,000.00 for a deal that I had – at least my attorney said I had it – and I gave up a confession for that. What I paid for that deal was a confession [and] giving up the right to provide for my family for a whole year. Then the State welched on the bargain, nobody told me I could hold them to it* – no one

and my second attorney – can I say that - what my second attorney said because...
SHAW: No.
HAEG: ... he keeps bringing it up that...
SHAW: No you needed to call your second attorney to testify.
HAEG: Ok I'm sorry – well anyway *I was deceived not only by Mr. Cole but I'm no longer deceived and that's why my frustration is so great is because I now got to the – the – the juicy part of the law and I know that it should have never happened and that's my frustration - is I at the time I didn't know the law – yet I hired the best to tell me what the law was and now I know what went on. And I don't know if you could ever imagine the frustration of knowing that these people or Mr. Cole knew what the law was, knew how to make the State comply with their own bargain, and deceived me so I couldn't do it. You know it – it's – it's almost something close to fantastic.* -Um- I believe *Mr. Cole actually perjured himself here because yesterday he had testimony where he told you and if I would've never refuted it you would've thought that he told me weeks before November 8th that the deal was going to be broken and he did that to protect himself. If you cannot see that -um- well I guess I just hope you can see that because I see it because I was the one that lived it and so were the other witnesses there.* We had a deal. I told everybody I'm goanna get out of this mess. I just wanted a judge to decide it and not Mr. Leaders who I thinks pretty heartless. I think he manipulates the system and not only does he manipulate the system I believe he manipulates – manipulated Mr. Cole. Mr. Cole made an interesting statement that I'd never heard from him before yesterday I believe it was he said that the reason why I needed to get on board with the DA was because he had 2 other clients that were pleading out. Now does that mean that there's a conflict of interest that I can't be the one that fights and he has 2 other clients

that are pleading out? They said – when I said – or *when Mr. Cole said to me "I can't piss Leaders off because I have to work with him in the future after you're done". I'm going now to me it didn't even really make that big of deal until I talked with some other people and they said "well is Mr. Cole actually on your side or is he looking at his future relationship with the State?"* What if Mr. Cole would have took me and fought and won? Do you think the State would look down on him? The State called me when I was outside and asked me to come back and participate because they knew I was one of the best in my field that there is. I'm one of the best pilots out there – I'm one of the very best hunters that you'll ever meet. They wanted somebody to go out and kill wolves. In the first 4 months of a 6-month program they'd killed 4 wolves - they wanted 60. I went to the Board of Game – Board of Game members said "Mr. – Mr. Haeg [why] are you here – you have a permit" – I said "I'm here to testify about the problem." They said, "You need to get out there and kill wolves". I can't - oh I guess I can't say what they said but you know my whole life is out there – I built it out there because I love it and it provides for my family so there's a - a huge incentive to do something wrong to protect what's gone. It would be like your business – Mr. Cole's business is on fire and we look over and we see it. We're suppose to obey the speed limits – everyone knows that – but could you get excited when you're going if we don't get there soon Mr. Cole's goanna lose everything. It's a big incentive – *I wanted all that before a judge – I never got any of that before a judge. I asked for – how do to that before a judge and nobody ever told me how to do that. I have a legal right – I have a constitutional right for effective assistance of counsel. It's in the Alaska constitution – it's in the US constitution and everyone has that right and I was denied that right because not only would they not tell me what my rights were they deceived me when I knew there must be rights like that.* I

don't you know I get upset -um- but you know *when the State took three quarters of a million dollars from my family and then used it against me to take another six million dollars which it'll cost me when this is all born out it's wrong. It was Mr. Cole's duty to stand up and fight for me – just like if you hire me to take you bear hunting – when that bear charges I don't run – I stand there and I take the bear out or I die trying. Mr. Cole ran on me and there's a bunch of people that are trying to help him escape liability for that and I have the proof – I have the facts. You heard some of them. You should hear what I have on my other attorney's cause I started taping them a little earlier. It's the most amazing thing I have ever seen in my life. What has happened to me because of a political case is unbelievable. You may not believe me but eventually it will come out because I won't quit. If this happened to another person it's the most tragic thing that could happen* because I've read the constitution backwards and forwards and around and I've read every ineffective assistance of counsel case in the entire U.S. When this hap – when this happened to me I was denied my rights under the constitution. I pointed out some of Mr. Cole's –uh- exhibits. He didn't even tell me...

JOHNSON: Excuse me – 5 minutes.

HAEG: Ok. *He didn't even tell me or didn't even do the research to tell me I could've got my plane back to go guiding.* I have that right. My whole case will be reversed. It's not – anybody can be a lawyer if you read the law and you don't have to interpret it because when you read the U.S. Supreme Court's –uh- like this one here. You know I'm not – I'm not afraid to tell you this. This made me cry virtually all night. From the U.S. Supreme Court and they quoted somebody else, Judge Wyzanski, but it says "but if the process loses it character as a confrontation between adversaries" and I think you guys heard Mr. Fitzgerald say you would never want to make an enemy out of the

prosecutor. Well this is the U.S. Supreme Court saying if it loses it's character as a confrontation between adversaries – the constitutional guarantee is violated – it's supposed to be – you're supposed to be adversaries. That's what the U.S. Cons – or the Supreme Court held that "it is a confrontation between adversaries" and if it isn't the constitutional guarantee is violated. As Judge Wyzanski has written "while a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills neither is it a sacrifice of unarmed prisoners to gladiators." Now that made me cry almost all night. Because *what happened to me is Mr. Cole and Mr. Leaders working together - they took all of my rights away from me and then they sent me to trial and do you know how frustrating that is. If someone handcuffs you (very upset) they either say you can go in and fight with your fists or you can accept this deal and we'll handcuff you and I said "I will take the deal and be handcuffed if I get that deal." Then they didn't give me the deal and I was handcuffed and they throw me into the pit. You should have seen what happened to me at my trial. I was – I wouldn't say raped but it was close because no one stood up for me. The State had everything. You need to look very closely at Evidence Rule 410, you need to look very closely at the charges filed against me – over half the charges were vio – filed that should have never been – been - accept for Cole's not speaking. Because Evidence Rule 410 says "any statement made by you in plea negotiations...*

JOHNSON: *1 minute.*

HAEG: *...may not be used against you if plea negotiations fail." I ask you did my plea negotiations fail? I went to trial, all my statements were used against me, for all the charges* – they were – this thing with why I wanted the - the thing in the Anchorage Daily News – my statements – the day of the arraignment my statements made

nationwide news. Do you know how egregious that is? That's horrendous. And it's goanna come out.
SHAW: Ok thank you Mr. Haeg.

## APPENDIX J

**November 4, 2004:** In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

STATE OF ALASKA, Plaintiff
vs.
Tony Zellars, Defendant

## INFORMATION

Count I - AS 8 .54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count II - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count III - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count IV - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count V - AS 8.54.720(a)(8)(A)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count VI - 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VII - 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VIII -AS 11.56.210(a)(2)
Unsworn Falsification
David Haeg

Count IX -AS 11.56.210(a)(2)
Unsworn Falsification
Tony Zellars

Count X - 5 AAC 84.270(14)
Trap Closed Season
David Haeg

Count XI - 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XII - 5 AAC 92.220(a)(1)
Failure to Salvage Game
David Haeg

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, "a licensed assistant guide, did knowingly commit a violation

of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars. a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(&)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellars, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

This information is based upon the investigation of Alaska State Trooper Brett Gibbens as compiled in report #0423593 which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat Cub" following a Fresh wolf track just outside of the legally permitted hunt on the Windy Fork of The Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellars while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while or patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult

moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was (consistent with a site where a wolf had been shot-gunned from the air. Gibbens I followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and, there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the Department of Public Safety Crime Lab as being fired from the Ruger

mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no carcasses located at the sites. The airplane tracks at all of the landing sites had large ski's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-14 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binneli twelve gauge shotgun, a large number of buck shot shells for the twelve gauge, a Ruger mini-14 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand .223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair were found inside the airplane, and the skis and over sized tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf

carcasses which were seized as evidence. The carcasses were being used for wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellars, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens

found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf snaring season had closed on April 30th. Also at the site, Gibbens located catch circles where three different moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellars, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3121104, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellars. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellars. The investigation shows that these wolves were not taken

by Zellars at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellars was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events given were almost exactly identical, and a summary of the statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellars bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by

Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All

wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 4th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General Alaska Bar No. 9711067

**November 8, 2004:** In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

STATE OF ALASKA, Plaintiff
vs.
Tony Zellars, Defendant

## AMENDED INFORMATION

Count I - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count II - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count III - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count IV - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count V - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne
David Haeg and Tony Zellars

Count VI - 5 AAC 92.140(a)
Unlawful Possession of Game

David Haeg and Tony Zellars

Count VII - 5 AAC 92.140(a)
Unlawful Possession of Game
David Haeg and Tony Zellars

Count VIII -AS 11.56.210(a)(2)
Unsworn Falsification
David Haeg

Count IX -AS 11.56.210(a)(2)
Unsworn Falsification
Tony Zellars

Count X - 5 AAC 84.270(14)
Trap Closed Season
David Haeg

Count XI - 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XII - 5 AAC 92.220(a)(1)
Failure to Salvage Game
David Haeg

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, "a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars. a licensed assistant guide, did knowingly commit a

violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly

possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellars, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

This information is based upon the investigation of Alaska State Trooper Brett Gibbens as compiled in report #0423593 which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat

Cub" following a Fresh wolf track just outside of the legally permitted hunt on the Windy Fork of The Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellars while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while or patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow

and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was consistent with a site where a wolf had been shot-gunned from the air. Gibbens I followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and, there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the Department of Public Safety Crime Lab as being fired from the Ruger mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no

carcasses located at the sites. The airplane tracks at all of the landing sites had large ski's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-14 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binneli twelve gauge shotgun, a large number of buck shot shells for the twelve gauge, a Ruger mini-14 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand .223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair

were found inside the airplane, and the skis and over sized tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf carcasses which were seized as evidence. The carcasses were being used for wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellars, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf

snaring season had closed on April 30th. Also at the site, Gibbens located catch circles where three different moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellars, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3/21/04, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellars. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellars. The investigation shows that these wolves were not taken by Zellars at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellars was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events given were almost exactly identical, and a summary of the statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellars bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in

McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 8th day of November 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General Alaska Bar No. 9711067

**April 25, 2005:** In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

## SECOND AMENDED INFORMATION

Count I - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne

Count II - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne

Count III - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne

Count IV - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne

Count V - AS 8.54.720(a)(15)
Unlawful Acts by Guide: Same Day Airborne

Count VI - 5 AAC 92.140(a)
Unlawful Possession of Game

Count VII - 5 AAC 92.140(a)
Unlawful Possession of Game

Count VIII -AS 11.56.210(a)(2)
Unsworn Falsification

Count IX - 5 AAC 84.270(14)
Trap Closed Season

Count X - 5 AAC 84.270(13)
Trap Closed Season
David Haeg

Count XI - 5 AAC 92.220(a)(1)
Failure to Salvage Game

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a) (15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count X

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

The undersigned swears under oat this information is based upon a review of Alaska State Trooper report #0423593 prepared by Trooper Brett Gibbens, which indicates the following:

On 3/6/04, Gibbens observed an airplane named "Bat Cub" following a fresh wolf track just outside of the legally permitted hunt on the Windy Fork of the Big River.

On 3/9/04, Gibbens was informed by Toby Boudreau of the Alaska Department of Fish and Game that David Haeg had reported that he had killed three wolves on the Big River on 3/5/04. Gibbens was given the GPS coordinates which had been reported by Haeg.

On 3/11/04, Gibbens flew to the coordinates given, and found wolf tracks, but no kill site locations in the snow covered ground.

On 3/21/04, Gibbens met David Haeg and Tony Zellars while they were in McGrath to seal the three wolves that they had reportedly taken on the fifth of March. During this contact Gibbens noticed that the "Bat Cub" that Haeg was flying was equipped with Aero 300 ski's with a center skeg, and an over sized tail wheel with no ski.

On 3/26/04, while or patrol of the upper Swift River, Gibbens observed a set of airplane ski tracks next to some wolf tracks that seemed consistent with a wolf hunter checking the direction of travel of a pack of wolves. Gibbens was out of fuel and day light, so he returned to McGrath for the night.

On 3/27/04, Gibbens returned to the upper Swift River and followed the same wolf tracks, which he believed the other airplane had followed. He soon came to a spot where the wolf pack appeared to have killed an adult moose. Gibbens could see from the air that an airplane had landed at this spot, and that someone appeared to have set traps and or snares at the spot. This was apparent to Gibbens because there were human foot tracks in the snow

and there was a live wolverine in a snare near the moose kill.

As Gibbens flew upstream from the location of the moose kill, he immediately located a set of running wolf tracks in the snow which ended in a bloody spot with airplane ski tracks at the same location. This evidence was consistent with a site where a wolf had been shot-gunned from the air. Gibbens I followed the remaining wolf tracks upstream and soon found three more similar sites in the snow as well as an additional site where a ski plane had landed and taken off multiple times.

Gibbens landed and snowshoed in to one of the sites and found evidence confirming what he had seen from the air. Running wolf tracks ended abruptly with blood and wolf hair in the track, and, there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again. Blood and hair samples were collected, and Gibbens returned to McGrath for better equipment and some help.

On 3/28/04, Gibbens returned to the area, where he met up with Trooper Dobson who had flown in from Bethel, and Trooper Roe who had flown in from Fairbanks in a State Trooper helicopter. During the day, the troopers confirmed that the four kill sites, which Gibbens had observed the day before, were sites where wolves were killed from the air with guns. Shot gun pellets were recovered from three of the sites, and "WOLF" brand .223 brass was found at the remaining site. (Later this .223 brass was conclusively matched at the Department of Public Safety Crime Lab as being fired from the Ruger mini-14 seized from the Haeg residence.) Shot shell wadding was found at two of the sites. The shotgun pellets recovered were size 00 and #4 buckshot. All four wolves appeared to have been hauled away whole, as there were no

carcasses located at the sites. The airplane tracks at all of the landing sites had large ski's with center skegs, and an over sized tail wheel. These tracks appeared consistent with the ski's and tail wheel, which Gibbens had observed on David Haeg's airplane when he was in McGrath. There were no catch circles (where trapped or snared animals tear up the ground) or other indications that any of these wolves had been trapped.

On 3/29/04, Gibbens obtained a search warrant for Trophy Lake Lodge, which is owned and operated by David Haeg. During the execution of the search warrant, troopers located several Ruger mini-14 magazines loaded with "WOLF" brand .223 ammunition. Also located were several wolf carcasses and parts of wolf carcasses, a buck shot pellet, and blood and hair in many locations outside the lodge. Haeg was not present at the time of the search. Gibbens saw airplane tracks in the snow on the lake, which appeared consistent with tracks seen at the wolf kill sites.

On 4/1/04, David Haeg's home and garage were searched pursuant to search warrant 4MC-04-002SW. During this search, many items were discovered, some of which were a Binneli twelve gauge shotgun, a large number of buck shot shells for the twelve gauge, a Ruger mini-14 rifle, and cartridge magazines for the mini-14 loaded with "WOLF" brand .223 ammunition. Blood and hair samples were also taken near the garage, and a spent "WOLF" brand .223 casing was found in the snow between the "Bat Cub" and the garage. David Haeg had a receipt in his possession for eleven wolf skulls which he had dropped off at a local taxidermy shop.

Also on 4/1/04, the "Bat Cub", N4011M was searched and seized pursuant to search warrant 4MC-04-003SW. During the initial search of the airplane, blood and hair

were found inside the airplane, and the skis and over sized tail wheel appeared consistent with the tracks from the kill sites.

On 4/2/04, Troopers Dobson and Gibbens returned to the area of the moose kill site near the location where the wolves had been shot-gunned on the Swift River. As Gibbens flew over the site in his State issued Super Cub, he saw that there were now two wolverines and one wolf caught in snares at the site near the moose. The season for wolverines had closed on March 31st, and the season for all leg hold trapping had closed that same day. Wolf snaring season remained open through April 30th. Upon landing and walking into the site, Gibbens saw that there were in excess of three dozen snares set on wolf trails near the dead moose, and also some MB-750 leg hold traps. Six of these traps were still set and operational, and were seized as evidence.

The two wolverines were caught in snares, and were seized as evidence. The wolf was left in the snare as it was still a legal animal. The remaining set snares were left alone since they were still legal at this point. The airplane tracks at this site appeared consistent with the tracks at the wolf kill sites and Trophy Lake lodge.

The troopers next went back to Trophy Lake to see if the wolverine traps near the lodge had been pulled, and to see if anyone had removed a wolverine that Gibbens saw there in a trap several days prior. At the lake troopers found that someone had removed the wolverine and snapped shut the traps near the lodge. While checking these trap sites, we found two and a half more wolf carcasses which were seized as evidence. The carcasses were being used for wolverine bait, and appeared to have pellet trauma in the rear ends.

On 4/2/04, Sgt. Waldron and Inv. Thompson executed search warrant 4MC-04-004SW, during which nine wolf hides were seized from Alpha Fur Dressers in Anchorage. The wolf hides had been dropped off by Tony Zellars, in the name of Dave Haeg.

On 4/3/04, Trooper Mountain seized a bag containing eleven wolf skulls from Kenny Jones taxidermy shop pursuant to search warrant 4KN-04-81SW. The skulls had been dropped off by David Haeg.

Also on 4/3/04, Troopers Dobson and Gibbens conducted necropsies in McGrath on the six wolf carcasses, which had been seized near Trophy Lake Lodge. During the necropsies, the troopers located 00 and #4 buck shot pellets in five of the six carcasses, and found an empty shot gun casing in the stomach of one of the wolves. This empty shotgun casing was later matched at the Department of Public safety Crime Lab as being extracted from the Binelli shot gun seized from the Haeg residence.

On 5/2/04, while on patrol in his State issued Super Cub on the Swift River, Gibbens went to the location of the moose kill trap site to see if the snares had been pulled. Upon arriving at the scene, Gibbens saw a wolf caught in a snare, which appeared to be freshly caught. He also observed several other torn up areas consistent with animals being caught in traps or snares. There was no longer any snow on the ground, and there was no suitable landing site.

On 5/4/04, Gibbens returned to the site with Trooper Roe in a helicopter. On the ground at the scene, Gibbens found the wolf caught in the snare, which was still salvageable, but was beginning to decompose. Gibbens skinned the wolf and collected it as evidence since the wolf

snaring season had closed on April 30th. Also at the site, Gibbens located catch circles where three different moose had been caught, one of which broke the snare and freed itself, and two which appeared to have been caught for a prolonged period of time and eventually tore down the trees holding the snares, and had escaped the area dragging the snare and part of a tree still attached to them. There was also another wolf caught in a snare, which had been consumed by other wolves except for the head and neck. Gibbens could also see where someone had removed a wolverine and a coupe of other wolves, which had been caught at the site after he was there on April 2nd. Gibbens was able to locate nineteen snares still actively set at the site with the loops still open.

Upon checking wolf sealing records for David Haeg and Tony Zellars, Gibbens was able to locate two sealing certificates. On sealing certificate #E009883, there are three gray wolves sealed which were reportedly harvested near lone mountain on the Big River within the legally permitted aerial wolf hunting area. The wolves were sealed in McGrath on 3/21/04, with the certificate signed by David S. Haeg. The investigation shows that these wolves were not taken at the location reported by Haeg.

On sealing certificate #E039753 there are six gray wolves sealed in Anchorage on 3/26/04 which were reportedly killed in Game Management Unit 16B on the Chuitna and Chakachatna Rivers by Tony Zellars. The wolves were reportedly taken by ground shooting with a snow machine. The certificate is signed by Tony R. Zellars. The investigation shows that these wolves were not taken by Zellars at the reported location nor by ground shooting from a snowmachine.

David S. Haeg was interviewed in Anchorage on 6/11/04, and Tony R. Zellars was interviewed in Anchorage on 6/23/04. During the interviews, the timelines and events given were almost exactly identical, and a summary of the statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellars bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in

McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 25th day of April, 2005 at Kenai, Alaska.

David W. MARQUEZ
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General Alaska Bar No. 9711067

## APPENDIX K

**November 8, 2004:** In the District/Superior Court for the State of Alaska Third Judicial District at McGrath. State v. Haeg, Case No. 4MC-S04- Cr. Notice of Supplemental Letter.

## NOTICE OF SUPPLEMENTAL LETTER FOR SENTENCING HEARING

David Haeg, by and through his counsel, hereby submits his supplemental letter for consideration during the sentencing hearing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004, at 10:30 a.m.

Dated this 9th day of November 2004, at Anchorage, Alaska.

MARSTON & Cole, P.C.
Attorneys for Defendant

By: "s/"
Brent R. Cole
AK Bar No. 860674

I certify that a copy of the foregoing document w/attachment was faxed to Scot H. Leaders.

By: "s/"
11/8/04

## APPENDIX L

**March 31, 2005** - In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr.

### MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INFORMATION

... The board exercised its prerogative. The means and methods authorized in a permit issued under the wolf control program are independent of all other methods and means restrictions in AS 16 and title 5AAC. (See 5 AAC 92.039 (h).) A wolf reduction program regulation established by the Board is independent of, and does not apply to hunting and trapping regulations, authorized in Title 5AAC. (See 5 AAC 92.110(m)). Violation of AS 16.05.783 is a misdemeanor, and upon conviction is punishable with a fine of $5000, one year in prison, or both. In addition, the court may forfeit to the state any equipment used in the violation. ...

Dated at Soldotna this 31 day of March 2005.

Robinson & Associates

"s/"
By: Arthur S. Robinson
ABA No. 7405026

## APPENDIX M

**May 6, 2005** - In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr.

**AFFIDAVIT OF DAVID HAEG**

"1. I am defendant in the above captioned case. I have personal knowledge of the matters stated in this affidavit.

2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.

3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, back out of an agreement I thought was reached. The negotiations ended without a PA between myself and the state. The prosecutor thereafter filed an amended information

4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.

5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of the three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements shouldn't be used to establish cause to believe I committed any of the crimes charged."

"s/"

David Haeg

SUBSCRIBED AND SWORN to before me this 6th day of May 2005.

"s/" Irene Robinson, Notary Public in and for Alaska

## APPENDIX N

**May 9, 2005** – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Order Denying Motion to Dismiss.

## ORDER DENYING MOTION TO DISMISS

I . Introduction

On November 5, 2004, the Defendant, David Haeg (Haeg), was charged with five counts of Unlawful Acts by a Guide, two counts of Unlawful Possession of Game, one count -of Unsworn Falsification, two counts of Trapping i n a Closed Season, and one count of Failure t o Salvage Game. Haeg was arraigned on these charges on November 9, 2004 in the McGrath District Court. On April 4, 2005, Haeg moved to dismiss the charges. The State opposed the motion. For the reasons below, the Court denies Defendant's motion to dismiss.

II. Facts

In March 2004, Trooper Brett Gibbens (Gibbens) observed a plane following wolf tracks outside the permitted predator control area on the Windy Fork of the Big River. Gibbens began an investigation, which resulted in locating kill sites alleged to be outside of t h e permitted predator control area. Gibbens saw Haeg's plane in McGrath and identified Haeg' plane as t h e plane he had seen following wolf tracks outside of the permitted area. During his investigation, Gibbens found wolf and wolverine traps that allegedly were seen in use after the closing date of trapping season. In addition, Gibbens learned that Haeg had signed the certificates reporting that all the wolves had been killed within the permitted predator control area. The

State filed an Information in November 2004 charging Haeg with eleven counts. Prior to his arraignment, the State filed an amended Information. Haeg was arraigned on the amended Information on November 9, 2004.

III. Discussion

Haeg moved to dismiss this case alleging that the amended Information does not contain a sworn probable cause statement in violation of his constitutional rights, that the charges of Unlawful Acts by a Guide violated his right to equal protection, and that the charges of Unlawful Acts by a Guide failed to state a crime for which Haeg can be prosecuted. The State opposed the motion stating that the filing of the seconded amended Information made the issue of the unsworn statement moot, that charging Haeg with Unlawful Acts by a Guide does not violate his right to equal protection, and that the counts of Unlawful Acts by a Guide allege that Haeg killed the wolves outside the permitted predator control area; therefore, the permit *is* not applicable and the counts are properly charged.

Haeg's first argument is based on the State's failure to swear to the probable cause statement in the Information or amended Information that was filed in November 2004. Haeg cites Criminal Rule 9 concerning issuance of a warrant or summons. Haeg is correct in his assertion that prior to the issuance of a warrant or a summons an information must be supported by oath. In this case, no warrant or summons was issued. Criminal Rule 7 (c) defines an information as "plain, concise and definite written statement of the essential facts constituting the offense charged." The Information and amended Informations filed by the State clearly meet the requirement stated in Criminal Rule 7(c). Haeg has not

provided any authority,[1] nor has the court found any, which requires an information to be sworn to when no warrant or summons is issued. The information in this case did what is required-it informed the defendant of the charges against him.

The second argument is that charging Haeg with Unlawful Acts by a Guide[2] rather than Same Day Airborne Hunting[3] violates his constitutional rights of equal protection and due process because these two statutes have different punishments. Haeg argues that he is similarly situated to other permit holders in the wolf predator control program; and therefore, should be subject to the same penalties. This argument fails for several reasons. First, the prosecutor has discretion to determine what charges should be brought.[4] In addition, the charges, Unlawful Acts by a Guide and Same Day Airborne Hunting, a r e not the same. In order to prove that Haeg committed the offense of Unlawful Acts by a Guide, the State must prove the additional element that Haeg was a licensed guide. It is not necessary t o prove that someone was a licensed guide at the time the offense was committed in order to show a

---

[1] Haag provided numerous authorities that showed that other jurisdiction would find that a sworn probable cause statement was necessary for the court to have subject matter jurisdiction. These cases, some of which dated back to the 1800's, were not persuasive in light of Alaska Rules of Court Criminal Rule 7.

[2] AS 08.54.720(a)(15). Haeg refers to being charged under AS 08.54.720(a)(8)(A) throughout his argument. In the original Information, Haeg was charged with violating AS 08.54.720(a)(8)(A), but in both amended Informations, he is charged with violating AS 08.54.720(a)(15).

[3] AS 16.05.783.

[4] See Bell v. State, 598 P.2d 908 (Alaska 1979) and Part v. State, 702 P.2d 651 (Alaska App. 1985).

violation of Same Day Airborne Hunting. Haeg has not alleged that the decision to charge was based on his race, religion, or other arbitrary classification, which would violate equal protection rights. Since the prosecutor has discretion to decide what charges may be brought and the charges are not the same, Haeg's argument fails.

Haeg's equal protection argument also fails because Haeg is being treated the same as other guides that hold a permit in the wolf control program. Although Haeg claims that there is no rational reason to treat guides differently than those who are not guides, he does not support this statement. Fish and game are a heavily regulated area in Alaska. It appears from the numerous laws and regulations promulgated about fish and game that the State takes a great interest in this area. The State has proscribed different punishments for individuals who have licenses in highly regulated areas from those who do not have such a license.[5] For example, individuals with commercial driver's licenses are subjected to more severe penalties for driving offenses than those with a regular driver's license. There does appear t o be a rationa basis for treating licensed guides with permits differently from those who are not guides. Therefore, Haeg's request to dismiss based on equal protection violations is denied.

The final argument for dismissal is that the charges of Unlawful Acts by a Guide do not state an offense for which Haeg can be prosecuted. Haeg's argument is confusing. His argument is that since obtaining a permit to participate in the wolf control predator program does not require a hunting license, then he cannot be charged with

---

[5] The State did not address this issue raised by Haeg, but the court believes that it should be addressed.

violating a hunting statute or regulation. The allegations in this case are that Haeg was not in the permitted predator control area when he and his shooter took the wolves. Obviously, if Haeg was acting i n accordance with a permit then that would be a defense to the charges, but that would be a factual issue to be decided at trial. If, as alleged, Haeg was outside the permitted area then the requirements to obtain a permit are not related to what offenses could be charged. This argument for dismissal must be denied.

IV. Conclusion

For the reasons above, the Court denies Defendant's motion to dismiss.

IT IS SO ORDERED.

Dated at Aniak, Alaska on this 9th day of May, 2005.

"s/"
Margaret L. Murphy
Magistrate

## APPENDIX O

**May 17-18, 2005** – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Tape No. 4MC-05-06. Verbal order.

*Judge Murphy*: "[Y]ou [Robinson] can't argue as a matter of law he [Haeg] was not hunting.

## APPENDIX P

**August 24, 2005** – In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr., Tape No. 4AK-05-36. Verbal order.

*Leaders* "[I]t became an issue in negotiation, prior to Mr. Robinson being involved, and we just maintained that position... if convicted of the wolf offenses we would use it as to enhance sentence."

*Robinson* "I don't know how that could be part of any negotiations to the un-negotiated case."

*Judge Murphy* "Well it was at one point."

*Robinson* "Well it wasn't on the charges that he went to trial on which was -you know- the charges that you said were different and that he plead not guilty to. So there's no agreement to that."

## APPENDIX Q

**Robinson & Associates**
Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669
Tele: (907) 262-9164 Fax: (907) 262-7034 l(800) 770-9164
E-mail: office&robinsonandassociates.net

September 21, 2005

Brent Cole, Esq.
745 W. 4th Ave., Suite 502
Anchorage, Alaska 99501
Via Fax: 277-8002

Re: State v. David Haeg
Case No. 4MC-04-24 Cr.

Dear Mr. Cole:

This is a reminder that David Haeg's sentencing has been continued to September 29th at 1:00 p.m. The hearing is anticipated to take all afternoon. Your testimony will be telephonic. I apologize that I cannot give you an exact time that you can expect the call.

If you have any questions, please don't hesitate to call me. We appreciate your continued patience with this process and your willingness to testify on Mr. Haeg's behalf.

Best regards,
"s/"
Bonnie Burger
Legal Assistant to Arthur Robinson
/bb

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT BETHEL

**SUBPOENA TO APPEAR/PRODUCE**

| | |
|---|---|
| TO: Brent Cole | Other Info: |
| DOB : | SSN: |
| Home Phone: | Work Phone: |
| Home Address: | Work Address: 745 W. 4th Ave., Suite 502 Anchorage, AK 99501 |

You are commanded to appear at the State Courthouse to testify in the case of:

Case Name: State v. David Haeg
Date: 9/1/05 Time:- Case No. 4MC-04-24CR
Court Address: Telephonic McGrath Sentencing Hearing

If you fail to appear and testify as ordered, a warrant may be issued for your arrest. This subpoena shall remain in effect from the date you are required to appear until you are granted leave to depart by the court or by an officer acting at the direction of the court.

You are ordered to bring with you:

You are entitled to witness fees and (if you live more than 30 miles from the court) travel and living expenses. You are not, however, entitled to advance payment of these fees if this subpoena is issued at the request of the state, city, borough, Public Defender Agency or other court-appointed counsel. Contact the attorney's office listed below to arrange for payment of fees. You must contact the attorney's office before you travel if you want to be paid travel expenses.

This subpoena does not require you to appear anywhere except the court at the above address. However, please call the attorney's office listed below on the afternoon of the working day before your scheduled appearance to find out whether you are still required to appear, the time to appear and other instructions. *Failure to call the attorney's office may make you ineligible for payment of witness fees and travel and living expenses.*

August 22, 2005 — "s/"
Date — Natalie Alexie, Clerk of Court

Subpoena issued at the request of:

Seal of The
Trial Courts
of the State of Alaska
Fourth Judicial District

Arthur S. Robinson
Attorney for: David Haeg
Address: 35401 Spur Hwy. Soldotna, AK
Telephone: 262-9164
If you have any questions, please contact
the attorney listed above.

RETURN

I served the above subpoena on the person to whom it is addressed, on ,20 , in Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance, except as provided in Criminal Rule 17.

Signature Title Type or Print Name

CR-340 BETHEL (1/02)(st.3) Crim. R.17
SUBPOENA TO APPEAR/PRODUCE Admin. R.

COMPLETE THIS SECTION ON DELIVERY

A. Signature (x) Agent
X - "s/" ( ) Addressee

B. Received by (Printed Name) C. Date of Delivery
"s/" 8/25/05

D. Is delivery address different from 1? ( ) Yes
If YES, enter address below: ( ) No

3. Service Type
(x) Certified Mail ( ) Express Mail
( ) Registered (x) Return Receipt for Merchandise
( ) Insured Mail ( ) C.O.D.

4. Restricted Delivery? (Extra Fee)

2. Article Number 7003 1680 0002 5117 0876
(Transfer from service label)

RECEIVED
AUG 29 2005
Robinson & Associates
Lawyers

From: "Alaska/Horizon Airlines" Alaska.lT@AlaskaAir.com
To: <haeg@alaska.net>
Sent: Friday, January 27, 2006 12:15 PM
Subject: Alaska Airlines/Horizon Air Confirmation Letter for 9/29/05

Thank you for choosing Alaska Airlines / Horizon Air!

For questions, changes or cancellations on an Alaska Airlines or Horizon Air purchased or Mileage Plan award ticket, please call 1 -800-ALASKAAIR (1 -800-252-7522) for Alaska Airlines, or 1-800-547-9308 for Horizon Air. (If calling from Mexico, precede these telephone numbers with 001 .) For questions, changes, or cancellations on an American Airlines, British Air, Continental Airlines, Delta Air Lines, Hawaiian Airlines or Northwest Airlines Partner Award ticket, please call the Partner Desk at 1-800-307-69 12.

Confirmation Code: ETDMSD
Name: Cole/BRENT
Ticket Number: 027-2 128444 143
Base Fare: 0.00
Tax: 0.00
Total: 0.00
Mileage Plan: None

REMINDERS AND RESTRICTIONS
This electronic ticket is not transferable. If you choose to change your itinerary, any fare increases and a change fee will be collected at the time the change is made.

PAYMENT INFORMATION
The amount of $0.00 (USD) was charged to the Visa Card * ***** * * * * ** 1740 held by JACKIE Haeg on 9/28/2005,

using electronic ticket number 027-2128444143. This document is your receipt.

ITINERARY
September 29 2005
PenAir 235
Depart: Anchorage, AK at 8: 15 AM
Arrive: McGrath, AK at 9: 15 AM
Seats: Contact operating carrier for seat assignments, Y Class

September 30 2005
PenAir 236
Depart: McGrath, AK at 9:45 AM
Arrive: Anchorage, AK at 10:45 AM
Seats: Contact operating carrier for seat assignments, Y Class

## APPENDIX R

**56 Questions for Brent Cole to be asked at sentencing**

1. Did David Haeg hire you in April 2004 to represent him against the State of Alaska?
2. Did you advise him to cooperate with the States investigation so as to obtain a satisfactory plea bargain that Mr. Haeg could live with?
3. Did this advice include giving the State a very detailed map of all locations, dates, and times including the over half the State had no knowledge of?
4. Did you also advise Mr. Haeg to give the State an interview in which you urged him to give a very detailed description of his activities? Also including the over half the State had no knowledge of?
5. Did this interview take place in your office with Mr. Haeg, Mr. Stepnosky, Mr. Gibbens, Mr. Leaders and yourself present?
6. How long did this statement take?
7. Was Mr. Haeg's statement made before Tony Zellers made any such statement?
8. Did you advise Mr. Haeg to cancel all magazine advertisements in anticipation of the plea agreement?
9. Did you advise Mr. Haeg to cancel all hunts after June 1, 2004 in anticipation of the plea agreement?
10. After Mr. Haeg's map and interview was given to the State was this information leaked to the press in violation of the rules governing plea negotiations?
11. On or about November 1, 2004 did plea negations end with a Rule 11 agreement between Mr. Leaders and Mr. Haeg in which Mr. Haeg agreed to plead to AS8.54.720 (a)(8)(A) main charges and other lesser charges, with opening sentencing with the agreement Mr. Haeg would discuss Doug Jayo's moose hunt and that he would loose his

guide license for 1 to 3 years – to be decided by Magistrate Murphy in McGrath on November 8, 2004?

12. Did Mr. Haeg in the week between the making of the Rule 11 agreement and the breaking of it ask 3 times whether or not it could be broken?

13. Did you tell Mr. Haeg each time "No, it is a binding agreement"?

14. Did Mr. Leaders then break this Rule 11 agreement about a week later when he faxed you, Kevin Fitzgerald, and Magistrate Murphy an amended information at 1:00 pm on November 8, 2004 which changed AS8.54.720(a)(8)(A) charges to AS8.54.720(a)15(A) charges?

15. Did these new charges carry a much more severe penalty?

16. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be open-sentenced by Magistrate Murphy?

17. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be allowed to complete an agreed to Rule 11 agreement?

18. Did the breaking of the Rule 11 agreement by Mr. Leaders happen only 5 business hours before yourself, Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Kayla Haeg, Cassie Haeg, Drew Hilterbrand and Jake Jedlicki were committed to fly to McGrath to execute it?

19. Did you know Mr. Haeg was flying Mr. Zellers in from Illinois, Drew Hilterbrand from Silver Salmon Creek, taking Mr. Jedlicki from work, Kayla Haeg from school and costing Mr. Haeg nearly $6000.00 in airfare, hotel, and driving expenses to comply with the Rule 11 agreement?

20. Did you inform everyone in the Haeg party when they arrived at your office at 4:00 pm November 8, 2004 that you had just hours before received a fax from Mr. Leaders which contained "bad news"? Did you inform all of them that the bad news was that the charges Mr. Haeg was

to plead to in McGrath the next morning had been changed too much harsher ones?

21. Did Mr. Haeg ask you how could this be after your assurances in the days before this could not happen?

22. Did you tell Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Drew Hilterbrand, Jake Jedlicki, Kayla Haeg, and Cassie Haeg that because of the new charges they shouldn't go to McGrath for the completion of the Rule 11 agreement on November 9, 2004?

23. Did Mr. Haeg ask you if there was a way to force Mr. Leaders to honor the agreement?

24. Did you tell Mr. Haeg the only thing you could do would be to file a complaint with Mr. Leaders boss – a woman you had formerly worked with?

25. Did you ever file this complaint?

26. What is the lady's name?

27. Did Mr. Haeg repeatedly ask you if you had filed the complaint?

28. What was your response?

29. Do you remember saying, "I left her a message and she hasn't got back to me"?

30. Why did you fail to enforce Mr. Haeg's right to have the State honor the Rule 11 agreement?

31. Did you tell Mr. Haeg "I can't piss Leaders off because after your case is done I still have to make deals with him"?

32. In the weeks after Mr. Leaders broke the rule 11 agreement did you make this same statement 2 more times?

33. Why did you never tell Mr. Haeg the agreement he had with Mr. Leaders was a binding one called a Rule 11 agreement?

34. Are you sure it wasn't because you didn't want to fight for Mr. Haeg's rights against Mr. Leaders?

35. Wouldn't you agree the $200 per hour Mr. Haeg was paying you included defending Mr. Haeg's rights?

36. After you failed to defend Mr. Haeg are you surprised that he fired you?
37. Why would you advise anyone to accept a Rule 11 agreement with the State if the State can change the conditions of the deal and then force the defendant to accept it? And if they don't go through with the change of plea with the new conditions set by the State the State gets to claim the defendant broke the deal and still make the defendant pay the price demanded by the State while the State then honors nothing, nothing, nothing on their part?
38. When Mr. Haeg asked you if he could complain to Magistrate Murphy about Mr. Leaders actions did you reply, "She will tell you anything you say can and will be used against you in a court of law"?
39. Was this to discourage Mr. Haeg from complaining of Mr. Leaders breaking of the Rule 11 agreement?
40. Would you agree that after you agreed to represent Mr. Haeg for $200 per hour this included defending Mr. Haeg's rights to conclude the Rule 11 agreement you negotiated?
41. Do you think it just that Mr. Haeg is now being forced to comply with the parts of the Rule 11 agreement required by Mr. Leaders yet not receive any of the parts required by Mr. Haeg?
42. Do you think it just that Mr. Leaders can ignore the concessions made to the Rule 11 agreement by Mr. Haeg such as providing the map, statement, cancellation of a whole seasons hunts, and all the money and time wasted on the McGrath trip of November 9, 2004?
43. At any time did Mr. Leaders indicate he was going to file charges in connection with Doug Jayo's moose hunt in September 2003?
44. Was there ever a deal that in return for Mr. Haeg to discuss the moose hunt he would not be charged in connection with the moose hunt?

45. Wasn't the exact opposite true?
46. That Mr. Haeg requested he be charged in connection with Mr. Jayo's moose hunt so it could not influence the outcome of the wolf issue?
47. Did you ever state to Mr. Haeg, "When Leaders screwed you he also screwed me"?
48. Did you ever make a statement to the effect that Mr. Leaders broke the Rule 11 deal because it was likely Magistrate Murphy would be lenient and not order forfeiture of Mr. Haeg's airplane?
49. Mr. Cole have you ever been a prosecutor for the State of Alaska?
50. Do you think Mr. Haeg has been treated legally, fairly and with justice by you, Mr. Leaders, and the system so far?
51. You have maintained there were "many deals" yet is it not true there was only one deal that both Mr. Haeg and Mr. Leaders agreed to?
52. The same one Mr. Leaders broke on November 8, 2004?
53. Did Mr. Haeg ever agree to forfeit the PA-12 airplane without that being decided by Magistrate Murphy?
54. After Mr. Leaders broke the first Rule 11 agreement did he offer to make a new Rule 11 agreement which first required Mr. Haeg to forfeit the PA-12 airplane?
55. If the State broke the first Rule 11 agreement yet got to keep what was conceded by Mr. Haeg why would they not break the second Rule 11 agreement and keep the PA-12 airplane?
56. What is the sense of anyone making a Rule 11 agreement with the State if the State can break it and keep what was given up and promised by the defendant?

## APPENDIX S

October 14, 2005 - In the Court of Appeals of the State of Alaska, Docketing Statement D, For Use in Criminal Appeals from District Court Under Appellate Rule 217. Haeg v. State, Trial Court Case #4MC-S04-024Cr.

1. DEFENDANT: Name: David Haeg

2. DEFENDANT'S ATTORNEY IN APPEAL: Name: Arthur S. Robinson - Bar Number: 7405026

3. DEFENDANT'S ATTORNEY IN TRIAL COURT: Same.

4. PROSECUTING ATTORNEY: Scot Leaders - Bar Number: 9711067. Agency: Office of the District Attorney.

5. TRIAL COURT PROCEEDING: Case No. 4MC-04-024 Cr.; Trial Judge: Margaret L. Murphy; Date Judgment Distributed: 10-05-2005; Co-Defendant's Name: Tony Zellers; Co-Defendant's Trial Case No. 4MC-04-025 Cr.

6. JUDGMENT OR ORDER BEING APPEALED: a. Judgment (merit appeal or combined merit & sentence appeal) Provide the following information for each conviction being appealed.

Count No: I-V: Unlawful Acts by a Guide – Conviction Only.

Count VI – VII: Unlawful Possession of Game – Conviction Only.

Count VIII: Unsworn Falsification -- Conviction Only.

Count IX: Trapping in Closed Season – Conviction Only.

7. RELATED PROCEEDINGS IN APPELLATE COURT: *n/a.*

8. ATTACHMENTS: a. (X) A copy of the final order or judgment from which the appeal is taken; b. (X) A statement of points on appeal; c. (X) A $100 filing fee; d. A designation of cassette tapes – (X) not submitted (no cassette tapes being requested).

Dated: October 14, 2005
"s/"
Arthur S. Robinson – Appellant's Attorney

## APPENDIX T

LAW OFFICE OF MARSTON & COLE, P.C.
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136

Erin B. Marston
Brent R. Cole
Coleen J. Moore

Telephone (907) 277-8001
Telecopier (907) 277-8002

August 25, 2005

VIA FACSIMILE: 262-7034
Mr. Arthur S. Robinson:
Robinson & Associates
35401 Kenai Spur Highway
Soldotna, Alaska 99669

Re: SOA v. David Haeg Our File No.: 102.484

Dear Chuck,

I am in receipt of the letter from your office dated August 22, 2005, in which a subpoena was enclosed for my appearance at Mr. Haeg's upcoming sentencing hearing. As I discussed with you in an earlier telephone conversation, I was not intending to be available on September 1, 2005, as it is opening day for duck and moose hunting season. I have already made plans to be out of the office. Please keep me advised as to the status of the hearing in this matter.

If you have any further questions or concerns, please do not hesitate to contact me. Thank you.

Very truly yours,
MARSTON & COLE, P.C.
"s/" Brent R. Cole

## APPENDIX U

**June 26, 2006** – In the District Court of the State of Alaska Fourth Judicial District, Haeg v. State, Case No. 4MC-S04-024 Cr., Appellate Court Case No. A-09455. Affidavit to Judge Dennis Cummings.

The Honorable Dennis Cummings,

First off I want to apologize for subjecting you to our (my wife Jackie & myself) lack of sophistication & professionalism in our current & future dealings with you.

I used to be a big game guide & have now found myself forced to become an attorney to protect the business & life I have built to provide for my family & their future.

I have absolutely compelling & irrefutable proof that my first attorney Brent Cole (Cole) sold me out to the prosecution. When I became suspicious because of all that was going wrong I had numerous conversations with Dale Dolifka (Dolifka), my business attorney (who used to be a criminal defense attorney), & other attorneys I know in the continental US. Because of my suspicions, confirmed by others, I fired Cole & hired Arthur Robinson (Robinson) who has been a long time friend of my family's. Things continued to go radically wrong & I ended up going to trial, being convicted, & sentenced to at least 6 times the penalty of Tony Zellers (my codefendant) who the prosecution said was equally culpable. During Zeller's sentencing then Magistrate Margaret Murphy Zeller's cooperation with the prosecution indicated rehabilitation because of his willingness to except responsibility for his conduct. The exceedingly strange thing in all of this is that it was I who cooperated first, implicating Zellers. Zellers who then did not want to cooperate cooperated. Then the State broke the

Rule 11 Agreement for which Jackie & I had already given up an entire year of guiding which represents virtually everything both Jackie & I make for a whole year. The State wanted more & more for the same deal that I had already paid so much for & when I asked Cole how they could do this he told me "that's the way it is" & I, realizing I was being held hostage by the State if this was the case, refused to give anymore then that which had already nearly bankrupt us. I ended up going to trial, nearly bankrupt, & with the State utilizing my own statements for the only evidence for over half the charges. Robinson, who took me to trial, told me that we could not enforce the Rule 11 Agreement because both the prosecution & Cole said it was "fuzzy" yet I have numerous emails, letters, & taped conversations that say otherwise. Robinson said my evidence would not matter in light of Cole & the prosecutions claim that the deal for which my wife & I had done so much was "fuzzy". In fact the State later claimed that I broke the deal & Robinson, who I now have realized was protecting Cole's malpractice, told me to never ever claim that I had a Rule 11 Agreement or to let anyone know how much Jackie & I had given up for it. He said doing so would jeopardize his "tactic". His "tactic" that the information the prosecution was not positively sworn to by the DA deprived the Court of jurisdiction. I researched this defense exhaustively & determined the reason why it was last a successful defense in 1909 since then it has been ruled harmless error and/or that the prosecutor's oath of office is all that is needed to file & information. In addition, when Robinson was still my attorney, I asked him what there was to stop the prosecution from showing the evidence they had of the Rule 11 Agreement to defeat our "tactic". Robinson was unable to give me a satisfactory answer & finally said something about personal jurisdiction versus subject matter jurisdiction would protect us. The result of all this is that the State got to claim that I broke

the Rule 11 Agreement thus they got to make me comply with the rest of what we agreed upon for the Rule 11 Agreement yet I never got one single thing out of it including being able to say the State was the one that broke the Rule 11 Agreement or that my family & I had done so much for it. The unfairness of this is almost incomprehensible to me. If my case is allowed to stand the prosecution will promise criminal defendants the world including not prosecuting them just so they can get confessions & bankrupt the defendant. Then, after the prosecution has everything & the defendant is bankrupt & cannot afford to hire a lawyer, the prosecution then takes the defendant to Court. Putting this on the other foot it would be like me telling the State I'll plead guilty to 25 felonies if they will just give me all of the evidence they have in my case. Then, after I've destroyed all of the evidence in my case, I tell them I am not going to plead guilty & want to go to trial. Now, since there is no evidence, I am pretty sure to win. Is this truly how the Criminal Justice System in the State of Alaska is going to be run?

After explaining what was going on to Dolifka & others they stated I needed to get an attorney from outside Alaska with no conflicts of interest in protecting my first two attorneys and to represent only me. My wife & I searched diligently for such an attorney but when we explained we had two attorneys who I told them I had proof of conflicts of interests & malpractice none would agree to represent me. I then started searching for an attorney close by, which I could show all of the evidence & work closely with so that the chance they would try to protect the first two attorneys would be unlikely. I found such an attorney in Mark Osterman (Osterman). I showed him the evidence I had & he said, "The sellout that happened was unbelievable" & that when the Court of Appeals saw it

there would be no doubt but that they would reverse my conviction. Because of the problems with the first two attorneys I taped every single word Osterman has ever said to me. About a month later, after I have him on tape over & over telling me how amazing the actions of Robinson & Cole were, he now tells me that he is unwilling to affect those attorneys lives & livelihoods & because of this he cannot show the actions of these attorneys to the Appellate Court.

Where does this leave the ignorant layman? It leaves me without the ability to hire an attorney willing to represent my interests without looking at what will happen to my former attorneys. Thus I have no other choice then to proceed on my own. I have many letters & taped conversations with other attorneys all of which indicate the same thing – don't become obsessed with this, except the consequences & "move on". In other words these attorneys, all of whom I've shown Cole & Robinson's actions just like I showed Osterman, all feel it is better to sacrifice my entire livelihood & infrastructure, with the resulting stress, physical, and financial hardship, then to hold the attorneys accountable for their part in this devastation of my families future. I am highly intelligent, read very fast & very effectively, & <u>all</u> the courts from the US Supreme Court on down, at least according to the overwhelming weight of case law, would be horrified at what has happened in my case.

Because I know they would be shocked & horrified I feel the compelling need to expose what has happened to me so it cannot & will not happen to anyone else. I may not be as practiced as other attorneys practicing before you but at least I have my interests & my family's interests at heart without the conflicting interests of trying to save someone else at our expense. The amount of law & opinions wrote on this subject is considerable. The amazing thing is that in all the case law that I have read, which is very

considerable, there is not one in which the defendant has evidence of multiple attorneys conspiring to conceal the malpractice they intentionally caused the defendant at the defendant's own expense.

It is because of this unique situation I ask to be allowed to proceed Pro Se & I ask that you consider these motions I have included. When this case was remanded I talked to Laurie Wade, Chief Deputy Clear, of the Alaska Court of Appeals to see if you could consider these additional motions. Ms. Wade said that when a case is remanded for any reason the defendant/appellant is allowed to file any motions & that the District Court has the authority to consider the motions. Because of this I hereby respectfully you consider all motions included.

I, DAVID S. HAEG, swear under penalty of perjury that the statements made in the above letter to Judge Dennis Cummings are true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.
"s/"
David S. Haeg

SUBSCRIBED AND SWORN TO BEFORE ME this 26 day of June, 2006.

"s/"

Notary Public in and for Alaska.

**June 30, 2006** – In the District Court of the State of Alaska Fourth Judicial District, Haeg v. State, Case No. 4MC-S04-024 Cr., Appellate Court Case No. A-09455. Affidavit to Judge Dennis Cummings.

The Honorable Dennis Cummings,

First off I want to apologize for subjecting you to our (my wife Jackie & myself) lack of sophistication & professionalism in our current & future dealings with you.

I used to be a big game guide & have now found myself forced to become an attorney to protect the business & life I have built to provide for my family & their future.

I have absolutely compelling & irrefutable proof that my first attorney Brent Cole (Cole) sold me out to the prosecution. When I became suspicious because of all that was going wrong I had numerous conversations with Dale Dolifka (Dolifka), my business attorney (who used to be a criminal defense attorney), & other attorneys I know in the continental US. Because of my suspicions, confirmed by others, I fired Cole & hired Arthur Robinson (Robinson) who has been a long time friend of my family's. Things continued to go radically wrong & I ended up going to trial, being convicted, & sentenced to at least 6 times the penalty of Tony Zellers (my codefendant) who the prosecution said was equally culpable. During Zeller's sentencing then Magistrate Margaret Murphy Zeller's cooperation with the prosecution indicated rehabilitation because of his willingness to except responsibility for his conduct. The exceedingly strange thing in all of this is that it was I who cooperated first, implicating Zellers. Zellers who then did not want to cooperate cooperated. Then the State broke the Rule 11 Agreement for which Jackie & I had already given up an entire year of guiding which represents virtually

everything both Jackie & I make for a whole year. The State wanted more & more for the same deal that I had already paid so much for & when I asked Cole how they could do this he told me "that's the way it is" & I, realizing I was being held hostage by the State if this was the case, refused to give anymore then that which had already nearly bankrupt us. I ended up going to trial, nearly bankrupt, & with the State utilizing my own statements for the only evidence for over half the charges. Robinson, who took me to trial, told me that we could not enforce the Rule 11 Agreement because both the prosecution & Cole said it was "fuzzy" yet I have numerous emails, letters, & taped conversations that say otherwise. Robinson said my evidence would not matter in light of Cole & the prosecutions claim that the deal for which my wife & I had done so much was "fuzzy". In fact the State later claimed that I broke the deal & Robinson, who I now have realized was protecting Cole's malpractice, told me to never ever claim that I had a Rule 11 Agreement or to let anyone know how much Jackie & I had given up for it. He said doing so would jeopardize his "tactic". His "tactic" that the information the prosecution was not positively sworn to by the DA deprived the Court of jurisdiction. I researched this defense exhaustively & determined the reason why it was last a successful defense in 1909 since then it has been ruled harmless error and/or that the prosecutor's oath of office is all that is needed to file & information. In addition, when Robinson was still my attorney, I asked him what there was to stop the prosecution from showing the evidence they had of the Rule 11 Agreement to defeat our "tactic". Robinson was unable to give me a satisfactory answer & finally said something about personal jurisdiction versus subject matter jurisdiction would protect us. The result of all this is that the State got to claim that I broke the Rule 11 Agreement thus they got to make me comply with the rest of what we agreed upon for the Rule 11

Agreement yet I never got one single thing out of it including being able to say the State was the one that broke the Rule 11 Agreement or that my family & I had done so much for it. The unfairness of this is almost incomprehensible to me. If my case is allowed to stand the prosecution will promise criminal defendants the world including not prosecuting them just so they can get confessions & bankrupt the defendant. Then, after the prosecution has everything & the defendant is bankrupt & cannot afford to hire a lawyer, the prosecution then takes the defendant to Court. Putting this on the other foot it would be like me telling the State I'll plead guilty to 25 felonies if they will just give me all of the evidence they have in my case. Then, after I've destroyed all of the evidence in my case, I tell them I am not going to plead guilty & want to go to trial. Now, since there is no evidence, I am pretty sure to win. Is this truly how the Criminal Justice System in the State of Alaska is going to be run?

After explaining what was going on to Dolifka & others they stated I needed to get an attorney from outside Alaska with no conflicts of interest in protecting my first two attorneys and to represent only me. My wife & I searched diligently for such an attorney but when we explained we had two attorneys who I told them I had proof of conflicts of interests & malpractice none would agree to represent me. I then started searching for an attorney close by, which I could show all of the evidence & work closely with so that the chance they would try to protect the first two attorneys would be unlikely. I found such an attorney in Mark Osterman (Osterman). I showed him the evidence I had & he said, "The sellout that happened was unbelievable" & that when the Court of Appeals saw it there would be no doubt but that they would reverse my conviction. Because of the problems with the first two attorneys I taped every single word Osterman has ever said

to me. About a month later, after I have him on tape over & over telling me how amazing the actions of Robinson & Cole were, he now tells me that he is unwilling to affect those attorneys lives & livelihoods & because of this he cannot show the actions of these attorneys to the Appellate Court.

Where does this leave the ignorant layman? It leaves me without the ability to hire an attorney willing to represent my interests without looking at what will happen to my former attorneys. Thus I have no other choice then to proceed on my own. I have many letters & taped conversations with other attorneys all of which indicate the same thing – don't become obsessed with this, except the consequences & "move on". In other words these attorneys, all of whom I've shown Cole & Robinson's actions just like I showed Osterman, all feel it is better to sacrifice my entire livelihood & infrastructure, with the resulting stress, physical, and financial hardship, then to hold the attorneys accountable for their part in this devastation of my families future. I am highly intelligent, read very fast & very effectively, & all the courts from the US Supreme Court on down, at least according to the overwhelming weight of case law, would be horrified at what has happened in my case.

Because I know they would be shocked & horrified I feel the compelling need to expose what has happened to me so it cannot & will not happen to anyone else. I may not be as practiced as other attorneys practicing before you but at least I have my interests & my family's interests at heart without the conflicting interests of trying to save someone else at our expense. The amount of law & opinions wrote on this subject is considerable. The amazing thing is that in all the case law that I have read, which is very considerable, there is not one in which the defendant has evidence of multiple attorneys conspiring to conceal the malpractice

they intentionally caused the defendant at the defendant's own expense.

It is because of this unique situation I ask to be allowed to proceed Pro Se & I ask that you consider these motions I have included. When this case was remanded I talked to Laurie Wade, Chief Deputy Clear, of the Alaska Court of Appeals to see if you could consider these additional motions. Ms. Wade said that when a case is remanded for any reason the defendant/appellant is allowed to file any motions & that the District Court has the authority to consider the motions. Because of this I hereby respectfully you consider all motions included.

I, DAVID S. HAEG, swear under penalty of perjury that the statements made in the above letter to Judge Dennis Cummings are true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

"s/"
David S. Haeg

SUBSCRIBED AND SWORN TO BEFORE ME this 26th day of June, 2006.

"s/"
Notary Public in and for Alaska.

## APPENDIX V

**January 27, 2009** - In the District Court for the State of Alaska at McGrath, State v. Haeg, Imprisonment Order, No. 4MC-04-24 CR:

Alaska Court System
P.O. Box 147
Aniak, AK 99557-0147
Phone: (907) 675-4325
Fax: (907) 675-4278

ANIAK DISTRICT COURT

Fax

To: David Haeg From: Magistrate David H. Woodmancy
Fax: Pages: 33 (including cover sheet)
Phone: Date: 1/27/2009
Re: Judgments

Comments:
Mr. Haeg, you will need to remand (turn yourself in) at the Kenai Courthouse-on March 2, 2009 at the Court Judicial Services Office. They are open from 8:00 A.M, to 4:30 P.M. and you can remand any time between 8:00 A.M and 4:00 P.M.

Also included in this fax (copies will also be sent in the mail) is the amended judgments reflecting that your license was suspended not revoked for 5 years and a new remand date.

I have spoken with the staff at Wildwood and they will make arrangements for you to attend the March 9, 2009 hearing on your fines and restitution due dates.

State of Alaska vs. David Haeg
DOB: 1/19/66 DOV: 3/5/04

Original Charge: *See Attached Judgments*

(x) Defendant is not in custody on this charge.

## INSTRUCTIONS TO JAIL

(x) COMMITMENT. It is ordered that the above-named defendant be held in custody:

(x) pending receipt of formal judgment Defendant was sentenced as follows. *CT I 5 days/ CT II 5 days/ CT III 5 days/ CT IV 5 days/ CT V 5 days/ CT VIII 10 days – 35 days total.*

(x) FINGERPRINT BEFORE RELEASE (x) OTHER INSTRUCTIONS. *Mr. H. :g is to remand on March 2, 2009 by 4:00 p.m. to the Judicial Services Office in the Kenai Court House.*

## NEXT COURT APPEARANCE

DATE: March 9/09 TIME: 11:00 AM PLACE: McGrath
(x) Other: Set fine due date

Defendant (x) is not represented by counsel – Pro Se

January 26, 2009
Date

"s/"
David H. Woodmancy
Magistrate

## APPENDIX W

**February 5, 2009**- In the Supreme Court of the State of Alaska, Petition for Rehearing – February 5, 2009, Supreme Court No. S-12771, Superior Court No. 3KN-06-844 CI.

DAVID S. HAEG, Appellant vs. BRENT R. COLE, Appellee

### PETITION FOR REHEARING

Pro Se appellant DAVID HAEG, in the above referenced case & under Alaska Appellate Rule 506, hereby asks for Rehearing in Supreme Court No. S-12771, decided January 30,2009.

### GROUNDS FOR REHEARING

1. The Court overlooked or failed to apply AS 09.43.120 - the statute directly controlling & which Haeg principally relied upon. AS 09.43.120 states the court shall vacate the award if the award was procured by fraud or other undue means.

2. The Court has overlooked or failed to apply the material fact Brent Cole & Kevin Fitzgerald irrefutably testified falsely to procure an award favorable to Cole.

3. The court has overlooked the material question that since the award was procured by fraud, AS 09.43.120 requires the award shall be vacated.

4. The above was clearly & specifically presented to this Alaska Supreme Court in Haeg's briefing and oral argument - yet the decision failed to address this.

## FACTS

Haeg & codefendant Tony Zellers were prosecuted by the State of Alaska for violations stemming from their participation in the extremely controversial Wolf Control Program. The State of Alaska seized Haeg's plane & other property Haeg was using at the time as his primary means to provide a livelihood. Haeg hired Cole to represent him & Zellers hired Fitzgerald as representation. Cole told Haeg:

1. Nothing could be done about the State falsely claiming the evidence was found where Haeg guides.

2. There was no way for Haeg to ask to get his airplane & other business property back before trial.

3. Haeg should make a plea agreement (PA) that only required a 1-year guide license loss by giving the State a statement.

4. There was nothing he could do when, after Haeg had already given the statement & already given up the guide year, the State changed the charges so they would require a minimum 3 -year guide license loss.

5. The State could use Haeg's PA statement against Haeg after the PA was violated.

Fitzgerald told Zellers the same. Haeg subsequently fired Cole & filed fee arbitration against him. The arbitration panel was made up of 2 attorneys practicing civil law & 1 public member. At arbitration Cole testified State law prevented Haeg from getting his airplane back prior to trial and that Haeg had no right to a hearing after its seizure - even though Haeg had told Cole this was devastating to Haeg's ability to provide a livelihood. Haeg's

cross-examination also showed Cole's testimony was false on numerous other issues.

Fitzgerald testified on Cole's behalf to the panel that neither Haeg nor Zellers's statements were used against Haeg or Zellers.

## ARGUMENT

In Waiste v. State 10 P.3d 1141 (Alaska 2000), this Alaska Supreme Court held that the seizure of a fishing boat, used as the primary means to provide a livelihood, required a hearing "within days, if not hours". The same decision held the boat must be released on bond. Cole's arbitration testimony, that Haeg had no right to a hearing after his plane was seized, was irrefutably false. Cole's testimony, that State law prevented the return of Haeg's plane, was irrefutably false.

At Zellers's sentencing, Fitzgerald testified on record to the following:

> "[Hlad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he fact of the matter is [they] provided the information and frankly the government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg."

Fitzgerald subsequent arbitration testimony neither Haeg's nor Zellers's statements were used against them is irrefutably false. It is also irrefutable Fitzgerald knew his testimony was false when he gave it to the arbitrators.

To reach an enforceable award the arbitrators must be presented & testimony. Since the arbitrators were not criminal attorneys they would necessarily give more weight to Cole & Fitzgerald's testimony of the criminal law. As shown not only did Cole & Fitzgerald falsify the facts to the arbitrators but also the law. Thus, AS 09.43.120 requires the award to be vacated. All these facts & arguments were clearly, specifically, & previously presented in Haeg's appeal briefs & oral argument to this court.

## CONCLUSION

For the reasons above Haeg respectfully asks this Alaska Supreme Court for Rehearing. If this Alaska Supreme Court fails to grant Rehearing & fails to vacate the award Haeg will be deprived of his Alaska & United States constitutional rights to due process & to the equal protection of the laws.

I declare under penalty of perjury that the forgoing is true & correct. Executed on February 5, 2009.

"s/"
David S. Haeg, Pro Se
P.O. Box 123
Soldotna, AK 99559
(907)262-9249 and 262-8867 fax

## APPENDIX X

**February 26, 2008**- In the Supreme Court of the State of Alaska, Order Seal Files – Date of Order: 2/26/08, Supreme Court No. S-12986, Trial Court Case #3AN-07-000D173.

David S. Haeg, Appellant v. Alaska Bar Association, Respondent

On consideration of the respondent's 2/11/08 motion to seal the record on appeal and the court's pleading file, and the 2/20/08 opposition,

IT IS ORDERED: The motion to seal is GRANTED.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk

Distribution:

Mark Woelber
Alaska Bar Association
PO Box 100279
Anchorage AK 99510

David S. Haeg
PO Box 123
Soldotna AK 99669

Order65s.wpt
Re05/19/2004 – WP11v

**February 26, 2008**- In the Supreme Court of the State of Alaska, Order Seal Files – Date of Order: 2/26/08, Supreme Court No. S-12985, Trial Court Case #3AN-07-000D172.

David S. Haeg, Appellant v. Alaska Bar Association, Respondent

On consideration of the respondent's 2/11/08 motion to seal the record on appeal and the court's pleading file, and the 2/20/08 opposition,

IT IS ORDERED: The motion to seal is GRANTED.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts
"s/"
Shannon M. Brown, Deputy Clerk

Distribution:

Mark Woelber
Alaska Bar Association
PO Box 100279
Anchorage AK 99510

David S. Haeg
PO Box 123
Soldotna AK 99669

Order65s.wpt
Re05/19/2004 – WP11v

(2)

Supreme Court, U.S.
FILED

NO. 081440 MAY 14 2009

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

BRENT R. COLE, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

**SUPPLEMENTAL APPENDIX H**
for
**PETITION FOR WRIT OF CERTIORARI**

DAVID S. HAEG
Pro Se

P.O. Box 123
Soldotna, AK 99669
Telephone: (907) 262-9249
Fax: (907) 262-8867

## APPENDIX H

November 11, 2004: Phone call between Brent Cole & David Haeg.

**HAEG:** Anyway I don't know have you seen all the crap hitting the newspapers etc. etc. I assume?
**COLE:** Well yeah.
**HAEG:** Um and is that you know at the time we gave our – our statements and stuff is that – uh - proper for them to do to release all that stuff? I mean is that how it goes or what?
**COLE:** Yep.
**HAEG:** And do I just sit back and uh not do anything about that or what?
**COLE:** Well um I don't know what we're goanna do, ok.
**HAEG:** I thought we were kind of trying to avoid this when we gave our statements and everything. I thought you know it was with the understanding that they would be somewhat lenient blah - blah – blah, they'd - we'd settle this quickly and not let it turn into a big media frenzy, circus, whatever you know and now it's whatever eight or nine months after the fact and that's - you know - this is what is happening. Is this – uh - what you expected?
**COLE:** Mm hmm. I mean I thought it was goanna be much worse, quite frankly.
**HAEG:** Where I get lost is **why did we tell the State everything then if they're just goanna use it against us? Why did we do that?**
**COLE:** **We wanted to mitigate the damages.** The idea was you did not – we did not have much of a defensible case.
**HAEG:** What I guess what I was getting at is – um - why uh and I you know I've been stewing about all this stuff because we in good faith flew Tony up here, took my kids

out of school, had my - you know - my wife and I come up there get hotels all this stuff and it really gripes me that we didn't get to pursue what we had to pursue and is it **I know you said that the only person we could bitch to is Leaders or Leaders boss.** I mean I bit my tongue when the judge – when we were talking – I mean I was scared to death of course I wasn't thinking real straight but could it – is it – **it doesn't do any good to bitch to the judge say, "hey we did all this on good faith with the State and then they just pulled the rug out from under us after we you know essentially spent another $2000 dollars or $3000 dollars just to have people come from Illinois and everything else and they just roop right out from under us".**

**COLE:** They didn't - I don't understand why you say that. We had 4 options on Monday night and we went through every one of the options.

**HAEG:** Well we couldn't have – we didn't have ...

**COLE:** Two of them would have allowed you to go out and be sentenced on Tuesday.

**HAEG:** **Not with the agreement that we'd had.**

**COLE:** What makes you think that it - things would be any better?

**HAEG:** Well at one point you told me that yep the judge would probably agree to have a – a –very strong case for a very minimal sentence and you told me straight to my face that yep you had a very good chance at keeping your plane, and yep she would probably look at you voluntarily giving up all your stuff, and yep she would look at it like you weren't guiding or hunting, and yep you were out there all that and that's what I wanted and that was taken away from me. I mean you don't remember telling me that uh – ok let me just think and put my words very – as clear as I can say - as I can – that this was all about the airplane and that ...

**COLE:** I said that - I remember saying that.

**HAEG:** And that there was a very good chance I would get to keep my ...
**COLE:** I said they must have thought there was a chance. **Cause they changed the rules.**
**HAEG:** Didn't before we came up there didn't I say that I would like to go open sentencing?
**COLE:** And I told you - you should think about.
**HAEG:** And that's when you contacted Leaders and said you told him ...
**COLE:** You wanted to go open sentencing.
**HAEG** : Yep and that's when everything got changed?
**COLE:** And I – and I - and I was shaking my head at that time.
**HAEG** : Well I'm not – I'm not blaming you for telling me what you think. That's what I'm paying you for. I – you – I think you're taking it that I'm attacking you I'm not. I want to somehow bring forth that in good faith I decided what I wanted to do with my family with your advice. Ok I take you advice sometimes - sometimes I don't and that's – that's my privilege.
**COLE**: That's right.
**HAEG** : That's my privilege.
**COLE:** That's exactly right.
**HAEG:** And **in my perspective we had an agreement like for 2 weeks and I made all the arrangements to in good faith go to McGrath. You follow me so far?**
**COLE:** Yeah.
**HAEG:** **And after we had invested a lot of time, effort, and money, committed to that venture to settle it because my life is getting eaten up by worry among other things and I had great expectations to leave McGrath either without a license for 5 years, and no airplane, and going to jail for 6 months and a $200,000 fine or something a little less. Um – no – nothing to do with you. I knew the judge was the one goanna be deciding that but all that was taken**

**away from me at the last minute that agreement.** Do you agree with that? Or I mean not at the last minute but whatever it was – well beyond when we could have changed anything and saved all the money in hotel and airfares and etc., etc., etc.

**COLE: The thing that was taken away was the option to go open sentencing total.** There were other options that were available that would've allow us to go out to McGrath. But to go totally open sentencing ...

**HAEG: Well to me they weren't viable options.**

**COLE:** The only thing that was different was the loss of the plane.

**HAEG:** Yep and is that – is that ethical for them to do say, "yep you give us the plane and you can -- you can have your day in front of the judge". Is that how the game is played all the time?

**COLE: Yep.**

**HAEG:** Um legal way to do it?

**COLE: They have discretion, yep.**

**HAEG:** Ok um let me just go through my little deals here. Um - like I said when Magistrate Murphy was on the phone would it have been appropriate or could I have – **could I have said, "hey judge before you leave could I put in my 2 cents worth that I came with the understanding this was the deal and then they pulled that rug out from underneath my feet". Could I have done that at that time?**

**COLE:** Um - she would have – if it would be – she would have cautioned you and told you before you say anything you're represented by an attorney anything you say can, will be used against you, you should speak with your attorneys advice. **If you continued to insist she probably would have listened and that would have been the end of it.**

**HAEG:** Ok and if and when we go to sentencing and anymore I don't know. I guess it's still up in the air. We still plead not guilty we could still go to jury trial.
**COLE:** That's right.
**HAEG:** And ...
**COLE:** January 7th
**HAEG:** Uh well that wouldn't be the trial then. I mean it'd get plead and then they'd whatever – it's just goanna get drug out. And you know – it – you know it also seems to me like the State enjoys the fact that I voluntarily gave up guiding because now the longer they drag it out it's just like I'm voluntarily shooting myself in the foot. And that also ...
**COLE:** Well then why would they have agreed to allow it to go back to July 1st?
**HAEG:** Um – if – if **I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?**
**COLE:** **I left a message. I haven't been in touch.**
**HAEG:** And ...
**COLE:** I mean how much – how much do you want me to push it? Is that what you want? Is that really what you want me to do David?
**HAEG:** Well.
**COLE:** I mean I – **you know I've got to deal with these people** but if you tell me, "that's the deal I want and I'm not stopping until I get it", I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you tell me.
**HAEG:** Well I'm not happy that they took away my opportunity that I thought we had set away from me.
**COLE:** Ok tell me right now is that what you want me to do? Do you want to go back and take the risk when now you've got things in place?
**HAEG:** You mean go back to the original agreement where it's one year ...

**COLE:** Yes – a minimum 1 year.
**HAEG:** Minimum 1 year..
**COLE:** Yes
**HAEG:** ... the judge to decide. **That is what I wanted at the time and that is still what I want.** Because I feel that they mal...
**COLE:** **Ok.**
**HAEG:** I personally feel that they maliciously took that away from me.
**COLE:** **Ok.**
**HAEG:** And yet you know you say that you ask them and they don't respond and to me it seems like it's like the carr - the whatever -- the bait and switch – they go "yeah you can do that" but then it never happens and "yeah you can go open sentencing with this" but it doesn't happen. You know – and I keep - it seems like we keep trying to you know uh make the deal attractive to them so that we can get what we want and they can get enough so that they're happy but it doesn't seem to really be working that way and maybe that's just my imagination. But um that's the way I feel and maybe it's wrong.
**COLE:** Mm hmm.
**HAEG:** Um **I would like to keep my plane.** You know and I know it bugs you and ...
**COLE:** It doesn't bug me.
**HAEG:** And so um – uh – you know and – **you know I understand you need to have a relationship with the - with these people but I also know that I'm paying you to protect my interest.** I know you have a – a – you know – it kind of goes both ways but I guess you know I feel you should be in my corner all the way.
**COLE:** I am in your corner all the way.
**HAEG:** You know so – uh -
**COLE:** That's why I keep trying to push you to see these things.
**HAEG:** Ok uh ...

**COLE:** I will tell you that I litigate against these guys on every front. And um – if you don't have confidence that I'm looking out for your best interest that I'm looking out for my own interest that's not a good deal. That's not what lawyers are supposed to do.
**HAEG:** Well I agree.
**COLE:** I will be the first to tell you that.
**HAEG:** Yep.
**COLE:** And if you lose confidence in me in that respect you do need to get another attorney.
**HAEG:** Well – um – alls it was is **you had said once to me that hey we can't totally go bonkers because I have to live with these guys you know after you're gone** and blown away, and out guiding again hopefully, or retired in Mexico I'm still here dealing with these guys on a daily basis and ...
**COLE:** **Well I deal on my word – you're right.**
**HAEG:** And you know and I appreciate that – because if you have a good relationship with them you can get probably more stuff done than if you don't have a good relationship but **what I feel when they pulled the rug out from under us when we all showed up in your office and you said, "uh Dave I got something to tell you" I feel they poked you in the eye.**
**COLE:** **They did and I'm still burning about it.**
**HAEG:** And another thing kind of gripes me is the amended charges.
**COLE:** Yeah.
**HAEG:** They have like a – a copy of the amended ones. The worse ones were in the body of the thing are still all the old charges. Did you notice that?
**COLE:** Mm hmm.
**HAEG:** So you know what they would have filed still had the old charges in it. It just had a cover letter stating different ones and is that – I mean it just seems to me like it's unprofessional.

**COLE:** The amended information changed the first five counts.
**HAEG:** No they still say uh – 08 inside the body when it says ...
**COLE:** Well that's because he probably did a poor job doing it.
**HAEG:** That's what I'm saying it's very unprofessional. You know I just look through it and I'm like "huh they forgot to change all of them in the body of the document". Um I just – in other words he knew – I mean he was planning on that all along and then "voop" last minute – you know.
**COLE:** I don't think he was planning on it - but anyway.
**HAEG:** Well we were. I was.
**COLE:** **Right.**
**HAEG:** I don't know if anybody else was but I sure was. Otherwise I wouldn't have taken my kids out of school and flown Tony up here.
**COLE:** **Mm hmm**.
**HAEG:** Um if we go to a jury trial is it in McGrath?
**COLE:** Yep
**HAEG:** Um I'd like you to just kind of – I know it cost – you'd have to look at it how much money blah – blah – blah it would take for us to do that, the advantages because alls I'd be doing was going right back to the agreement that was pulled out from underneath my feet – I understand that. We'd be going in there essentially saying, "yeah we're guilty but we're only guilty of same day airborne - furbearers and not big game".
**COLE:** Mm.
**HAEG:** You know I think that's a done deal **because we already have given them everything we need to persecute us** and now if we go that way it's pretty – anyway I would like to you think about just a really abbreviated trial.
**COLE:** **Ok.**

November 22, 2004: Meeting between Brent Cole, David Haeg & Tom Stepnosky.

**HAEG:** **One of the Board of Game Members – current Board of Game Members told me in Fairbanks literally about a week before went out there he said, "Dave if you end up shooting animals outside of the area just make sure you mark them on your GPS inside the area".**
**COLE:** – He's not – he's not...
**HAEG:** – He's not part of the State?
**COLE:** – I don't know if he or not.
**HAEG:** – **He's appointed by the governor** and but I don't know.
**COLE:** – You know I don't know what to tell you on that one because **I don't think that a State official can tell you to violate the law quite frankly. I really don't. I don't know that it's a defense.**
**HAEG:** – Well it's partially to do with that thing I have wrote – that as I wrote it I became to believe – maybe mistakenly – but um other people have read it, Toms read it, and I believe I have a pretty -uh – I feel I have a reasonable explanation why I shouldn't be punished as much as somebody who did essentially the same thing but did it with a client in the field that's paying them money. Because I was out there spending my own money to help with a problem that is widely known as a problem and has now been opened up across most of the areas where I did it to what I've done is legal. So I feel that I have a better chance of getting a lenient sentence then someone that went out and landed and had their client jump out and shoot a moose for $16,000. Because I was spending my own money, burning my own fuel, risking my own airplane to help the State with a program – where I was is now where that program is expanded to. And in the State Constitution

it says that if there are things like that where you do things and later on a law is passed that allows it that that will be looked at when it comes time to sentence and time to decide the punishment that's handed down.

**COLE:** – Ok. You want to take that risk? You have your license back in 8 months.

**HAEG:** – **I already gave up a whole years worth of income.**

**COLE:** – I know that David.

**HAEG:** – **Doesn't that account for anything?**

**COLE:** – Yeah it does – that's – **that's what we negotiated.** .

**HAEG:** – I understand.

**COLE:** It doesn't make any difference, to them. I'm just saying that's the way they see things, that's the message they send to Leaders.

**HAEG:** Yep but you know it I also remember why didn't – why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that?

**COLE:** **I don't know why he didn't do that. That pisses me off.** He just –he has caused me to have to sit here and explain this to you 25 times he did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him.

**HAEG:** Yep.

**COLE:** It pisses me off. **He had no concept of what it has done to your and my relationship.**

**HAEG:** Well I think it all boiled - it all boiled down to like you admitted before and I admitted that it all boils down to the airplane. Because he didn't want to go out there and have the airplane up for grab – up for the judge to decide who keeps the plane. That's why that whole thing went down the tubes.

**COLE:** He's so stupid. **Your right he did say that and what can I say - I cannot - I have no control over what parameters he set.**
**HAEG:** Like I told you to me it's important to get the plane back somehow. You don't – I guess what you're saying we're not goanna do that short of a trial probably?
**COLE:** **It doesn't sound like it to me.**
**HAEG:** So he just put his foot down even though that isn't his job to administer punishment. It is his job to determine guilt or innocence as far as I'm concerned.
**COLE:** They can do all that – they do it all the time – I mean you can say that but...
**HAEG:** Well that's what I read through the Constitution.
**COLE:** They do it day in and day out – they set penalties.
**HAEG:** How did we get to where we're at now? From where we were at before – where you – how did we get from there to here?
**COLE:** Well I just keep talking to him, we keep working it, we keep throwing out suggestions, the pressure comes down, **there's a day that we're suppose to go out there,** they've got to put on evidence, they concede a little bit, we concede a little bit, we are where we're at.
**HAEG:** Ok. Anyway there's a couple more things – have you made any headway on whether I should be booking hunts or not or whether Arthur should be booking hunts or going to the sport shows?
**COLE:** Hey Scot it's Brent I have uh David Haeg and Tom in here and they're asked again about whether the Troopers are willing to talk about the plane. Can you call me back and if you talk to them if you could give me the name of the trooper whose making this decision and maybe I can talk to him personally seeing that this is such a difficult thing for them to make a decision on. Call me 277-8001. Bye.
**HAEG:** Um have you run it by Leaders that I'm thinking about going to a jury trial?
**COLE:** Yep.

**HAEG:** What does he say about that – great?
**COLE:** I don't have good client control. He can't believe that I would do that. And I just say, "well..."
**HAEG:** Ok.
**COLE:** **"...he wanted to go open sentencing - yeah I know I don't understand it but".**
**STEPNOSKY:** You should have a sit down talk with Scot Leaders and say, "hey Scot come on now – I mean just like he said – gave up the hunting season, had him stewing over this god damn moose thing, now then spilled his guts from – at the deposition like he was asked to, all of that and you know what are you doing – ok – you've got him nailed to the cross already well lets put some more spikes in him – I mean – come on Scot" and say "hey (inaudible). You know it's been going on for 8 goddamn months already – I mean goddamn – life is to freaking short to be going through this shit. Resolve it and get the man on with his freaking life.
**COLE:** And – and you know – maybe I shouldn't be so concerned out of your welfare. It certainly isn't in my best interest. My best interest is for you to litigate the shit out of this thing and just keep paying me a whole ton of money.
**STEPNOSKY:** I thought he did that already.
**COLE:** No I haven't even started that - down that trail. I don't want to start down that trial. You mean – I – you know – I – I - unlike what people say about attorneys I want to see you get taken care of. I mean I – under these circumstances you're never goanna feel good about this thing, regardless.
**STEPNOSKY:** **And with nothing in writing that I can see at this point I mean freaking Leaders can go in there before January 7th and amend that thing anyway he wants.**
**HAEG:** Um what should I do about these people that keep calling me wanting to send me money?
**COLE:** You'll make them send you money on July 1st.

**HAEG:** Ok well if you could just at some point try to figure out yes or no. Also we – **I have yet to get a full copy of my interview with the State that we did in your room.**

**COLE:** I understand that to – I have asked them to send a tape into the Troopers – the tape is out in McGrath – I've asked them to send it in to here so that I can have it redone.

**STEPNOSKY:** I mean there aint very much damn time between now and January 7th

**HAEG:** And what happens at January 7th? What does that mean?

**COLE:** Well my idea is that this is goanna happen before then.

**HAEG:** Well that's what we've said 8 months ago. What happens at January 7th?

**COLE:** Well it's a trial call and they say well what's goanna happen? If its goanna go to trial and if it's goanna go to trial then you've gotta be there.